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# MARRIAGE AND DIVORCE

IN

*PHYSICAL, PSYCHICAL, MORAL, AND SOCIAL  
RELATIONS; ACCORDING TO THE LAW  
NATURAL AND REVEALED*

BY

B. FRANKLIN, D.D.

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## PREFACE.

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"Unto the pure all things are pure : but unto them that are defiled and unbelieving is nothing pure ; but even their mind and conscience is defiled."—S. TITUS i. 15.

MODERN thought demands the radical discussion of every question. It will be satisfied with nothing less. The advocates of morals, and of Christianity also, will do well to recognize this fact.

A very respectable and influential number of thinkers and writers, however, accept the principle of authority, especially that of Divine authority ; and they ask nothing else than the clear word of God, as the warrant for any doctrinal or moral point. Not a few also accept the general testimony and witness of the Christian body, as gathered from the extant writings of the Christian ages, or from well supported enactments of canon law, as at least weighty, if not authoritative, for or against any particular point of doctrine or morals. In short, "the Word of God" is one authority, widely recognized ; and "Catholic consent" is another.

Those who accept one or both of these authorities are “powers that be.” They have weight and influence, not only in the direct line of their vocation, but upon current civilization also. Still they do not rule the course of progress. Outside their limits, and, indeed, within their boundaries, is a surging, restless mass of free-thinkers, which is also one of the powers that be. Indeed this mass, if not the chief among the powers that be, is at least one that cannot be safely ignored by those who wish to promote the purity of public morals. Free-thinking is no longer disreputable. It is no longer synonymous with free license. The vicious, indeed, confound the two, but they are beyond argument; what they desire they will, and what they will they do. But the vicious are a minority among the influential of the free-thinkers. The majority profess to believe in right and truth, and to distrust or even hate the wrong and the false. They believe also in the existence of law, and regard civilization, in all its departments, as subject to law. This they call natural law; and, when consistent, they advocate respect for it with due observance of its clear principles. Even among the Socialists may be found many clear and deep thinkers, who upon purely philanthropic principles advocate the due observance of natural law.

Marriage is an element in civilization. Civilization never has existed without it. Before man was a citi-

zen, or member of any body politic, he was first a member of a family; and marriage is the basis of the family. However the forms of the family have varied, it has always been an organization, with head and members in some relation to each other. Although civilization has varied, yet its variations have corresponded with the differences in the families that were its foundations.

In every age, therefore, marriage is not only a personal matter and a social element, but a basis upon which current civilization rests. In this "era of progress" the foundations are laid bare. Marriage is questioned, both as to its essential elements and as to its *raison d'être*. These questions demand answers.

The object of this little book is to contribute toward these demanded answers. It attempts to present every point, *first*, in its relations to Natural Law, and *then* in its relations to the Word of God, and *finally*, in the bearing upon it of catholic consent, as expressed in general principles of canon law. The aim has been to avoid burdensome details, and to treat succinctly but clearly of fundamental principles and their necessary applications. In doing this some rather plain terms are used. Wherever it has seemed necessary for the clear statement of the grounds of argument, the physiology of marriage has been plainly set forth. The psychology of marriage has received due consideration also. Both have their bearing upon

"woman's rights." The spiritual aspects of marriage have been noticed in their due position.

. The author is not aware that any other writer has treated this subject in a radical manner. He thinks it must be so treated, in order to gain for it that public attention which may lead to some necessary social reforms, and to an improved legal code. It is certain that good morals are the only sure base of social order, and hence of good government and of progressive civilization. Right views of marriage, with their general practice, are essential to good morals. Hence it is hoped that the plain terms and radical arguments of this book will be found only consonant with the exigencies of their occasion, and with the importance of the subject.

## CONTENTS.

---

	PAGE
PREFACE .....	iii

### CHAPTER I.

THE PRINCIPLE OF MARRIAGE.....	I
Marriage, the social foundation, 1 ; Its effect upon persons, 2 ; Its relation to the Church, 2 ; Its relation to the State, 3 ; Its relation to the Law, 3 ; Its relation to the Family, 4 ; The marriage union, according to Revelation and Science, 4 ; Its objects, extent, and personal relations, 5 ; Creationists and Traducianists, 7 ; Marriage in the Resurrection, 8 ; The untimely fruit, 9 .	

### CHAPTER II.

THE PRINCIPLE OF CANON LAW .....	12
Marriage, not only physical and psychical, but spiritual also, and hence amenable to Canon Law, 12 ; Canon Law for man, and not man for Canon Law, 13 ; The Divine Law both natural and revealed, 14 ; Law and Casuistry, 14 ; Their commingling impracticable, 15 ; The Church and the world, 15 .	

## CHAPTER III.

	PAGE
<b>STATISTICS.....</b>	16
The present moral condition of society, 16 ; The tendency of statistics, 17 ; Socialism and marriage, 17 ; Statistics not important to the Church, 18 ; Divine law her rule absolute, 19 ; Marriage in view of natural law, 20 ; Materialists and evolutionists, 21.	

## CHAPTER IV.

<b>MARRIAGE A MUTUAL CONTRACT UNDER NATURAL LAW.....</b>	22
Analogy throughout all nature, 22 ; Society necessary to man, 22 ; Society depends upon the family, 23 ; Individual liberty, 23 ; The necessity of marriage, and its consequences, 24 ; The mutual contract, 26 ; The Law of love, 27 ; Indissoluble ideally, 28 ; The ideal not common, 29 ; When dissoluble, 29 ; Cause and consequence of physical dissolution, 30 ; 1. To woman—2. To man, 30 ; Natural instinct in respect to unfaithfulness, 31 ; Equality of the sexes, 32 ; Other evils than unfaithfulness, 33 ; Separation and remarriage, 33 ; Natural divorce, 34 ; Endurance of the wrong, 35 ; The head of the family, 36.	

## CHAPTER V.

<b>MARRIAGE A SOCIAL CONTRACT.....</b>	38
The family in relation to society, 38 ; Marriage a civil contract, 39 ; The family in relation to the State, 40 ; The civil contract in relation to government, 41 ; The principles of civil law as to marriage, 43 ; The peculiarity of the marriage contract, 44 ; Civil divorce, 45 ; Expediency, 46 ; The family destroyer, 46 ; The rights of the wronged, 47 ; Absolute divorce, 48 ; Expediency, 50 ; Public opinion, 51.	

## CHAPTER VI.

<b>MARRIAGE ACCORDING TO THE REVEALED DIVINE LAW .....</b>	53
A complete personal union, 53 ; The scope of marriage duties, 54 ; The basis of natural law, 55 ; The Bible, 56 ; The first	

marriage, 56 ; Two purposes of marriage—both temporal and everlasting, 59 ; The house-band, 61 ; The Fall, 62 ; Domestic disorder, 63 ; Innocence, 65 ; Ideal purity, 66 ; The curse and evils of impurity, 68 ; Objects of marriage, 70 ; The animal instincts in act and thought, 71 ; Natural and good, 72.

## CHAPTER VII.

POLYGYNY, POLYANDRY, MONOGAMY .....	74
-------------------------------------	----

Marriage dual, by its Law of love, 74 ; The expansion of the Law of love, 75 ; Nature's seal upon monogamy, 76 ; Historic marriage, 77 ; Christianity insists upon Monogamy, 78 ; The family, East and West, 78 ; True progress possible only in monogamous communities, 79 ; Western civilization and Monogamy, 80 ; Christianity and social order in the West, 81 ; Monogamy and Liberty under law, 82 ; Love and Law, 82 ; The practicable law of love, 83 ; The Bible and Monogamy, 84 ; The mystery of marriage, 85 ; The objects of marriage, 86 ; The head of the family, 87 ; Marriage laws in view of individual rights, 88.

## CHAPTER VIII.

PROHIBITED DEGREES.....	91
-------------------------	----

Ideal marriage as a power, 91 ; Actual difficulties, 92 ; Limitations to Marriage under Natural Law, 92 ; The insufficiency of natural law, 94 ; Helping forces, 95 ; Perpetual motion, and Personality, 96 ; God and morals in relation to Philosophy, 96 ; The Divine Revelation, 98 ; Limitations to Marriage in the Bible, 98 ; The first part of the Table of Prohibited Degrees, 99 ; The principle of prohibition, 100 ; Specific prohibitions, 101 ; Father or mother, 101 ; Step-mother and step-father, 101 ; Sister or brother, 101 ; Granddaughter or grandson, 102 ; Half-sister, 102 ; Marriage, physical, psychical, and spiritual, 103 ; The second part of the Table of Prohibited Degrees, 105 ; Aunt, 105 ; Uncle, 106 ; Uncle's wife, 106 ; Deceased aunt's husband—not in terms prohibited, 107 ; Daughter-in-law, 107 ; Confusion of blood, and its penalty, then and now, in State and in Church, 108 ; Brother's wife,

	PAGE
109 ; Consanguinity and not affinity, 110 ; A deceased wife's sister, 111 ; The third part of the Table of Prohibited Degrees, 111 ; Affinity : its grounds and limitations, 112 ; Polygyny limited, 113 ; Marriage with a deceased wife's sister not condemned, 114 ; Tables of Prohibited Degrees, 115 ; Old penalties, 116 ; Penalties under both revealed and natural law, 117 ; Law subject to criticism, 118 ; Moral grounds for the prohibited degrees, 119 ; Wife or widow, 119 ; The reason given in Scripture and nature for the prohibited degrees, 121.	

## CHAPTER IX.

DIVORCE .....	122
---------------	-----

Generally allowed but not encouraged, 122 ; Necessity for its allowance, 124 ; Adultery the destroyer of marriage, 124 ; The principle of contracts, 125 ; Marriage both a contract and personal union, 126 ; Individualism in relation to marriage, 126 ; One flesh, 127 ; Marriage a social and civil contract, 128 ; Relation of individual rights to social obligations, 129 ; Marriage a mystery, 130 ; The mystery helps the contracts, 131 ; Divorce in relation to the three aspects of matrimony, 132—I. To the mutual contract, 132 ; Adultery breaks it, 132 ; Marital rights, 133 ; The rights of the woman, 133 ; The verdicts of natural law, 134 ; Lesser violations of the mutual contract of marriage no ground for divorce, 134 ; Accordance between natural and revealed law, 135—II. To the social and civil contract, 135 ; Public opinion and legislation, 136 ; Desertion and separation, 136 ; Relations of separated parties, 137 ; Separation, not divorce, a remedy for wrongs and evils, 138 ; Felony and Divorce under natural law, 138 ; Felony and Divorce under revealed law, 139 ; Expediency, 140 ; Adultery, 141—III. To the holy mystery of marriage, 141 ; Natural law and the Mystery, 142 ; Theism and the Mystery, 142 ; Analogies to the Mystery in Nature and in God, 143 ; The Divine-family, 144 ; The Bride of Christ, 145 ; The sacredness of marriage, 145 ; The horror of its violation, 146 ; The ruin of the family, 147 ; Deliverance, 147 ; Christian purity, 148 ; Christ's law of divorce, 149 ; One cause only, 150 ; Remarriage, 151 ; The man's right of divorce, 152 ; Physical and psychical adultery, 153 ; The woman's right of divorce, 154.

## CHAPTER X.

PAGE

## HISTORIC CANON LAW AND OPINIONS OF CHRISTIAN FATHERS.. 161

The extent and weakness of Historic Canon Law, 161 ; Concupiscence, 162 ; Heathen ideas of the body, 162 ; The body essentially good, 163 ; Casuistry and law, 164 ; The universal, masculine and feminine, principles, 165 ; The tripartite union in marriage, 166 ; Second marriages, 166 ; The cause and effect of too stringent Canon law, 167 ; Rigorous criticism of Canon law, 168 ; Radical criticism, 169 ; The Canons Apostolical, 169 ; The holy estate of matrimony, 169 ; Canons of Gangra, 169 ; The clergy forbidden marriage after ordination, 170 ; Violence binds the violator, 171 ; Betrothal, 172 ; Second marriages, 172 ; Divorce and its effect, 173 ; Adultery not the same in man as in woman, Basil, 176 ; Opinions of the Fathers : Hermas, 177 ; Clemens of Alexandria, 178 ; Tertullian, 179 ; Cyprian, 179 ; Lactantius, 179 ; Ambrose, 180 ; Basil, 180 ; Jerome, 181 ; Augustine, 182 ; Pope Innocent, 183 ; Alexius, 184 ; Canons on Divorce, 185 ; Apostolic, 185 ; Elib., 185 ; Arelat., 186 ; Neocæsarea, *et al.*, 187 ; Trent, 188 ; Church of England, 189 ; Modern legislation in view of English and of ancient Canon Law, 192 ; Other causes for divorce, 194 ; Felony, 194 ; Long absence, 194 ; Insanity, 195 ; Temper, 195 ; Impediments to marriage, 195 ; Impotence, 195 ; Prohibited degrees, 196 ; Dirimants, 196 ; Error, 197 ; Disparity of social condition, 197 ; Vow of celibacy, 198 ; Consanguinity, 198 ; Crime, 198 ; Difference of Religion, 199 ; Violence, 199 ; Marriage of Priests, 200 ; Precontract, 200 ; Public decency, 201 ; Disparity of age, 201 ; Insanity, 201 ; Affinity, 201 ; Clandestinity, 202 ; Abduction, 203 ; Sister of deceased wife, 204.



# MARRIAGE AND DIVORCE.

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## CHAPTER I.

### THE PRINCIPLE OF MARRIAGE.

“The salt of the earth” only can preserve organized society from rapid and utter decay. As a structure, society is based on public morals, in whose very foundation marriage rests. It is a stone in that foundation, so broad and massive that the superstructure can stand and grow only so long as marriage continues in it pure, sound, and firmly set. It is also a “lively stone,” *i.e.*, a stone which not only has its own place, but exerts a constant influence which pervades the edifice. The whole basal structure of public morals, with society its superstructure, is therefore in every part either enduring or decaying, in relative proportion to, and dependence upon, the perfectness or the imperfection of concurrent marriages. Society, as an actual or even possible organization, originates in marriage; it also progresses along the generations healthfully while its marriages are pure; or decays and disintegrates in proportion to prevalent impurity. As society sustains all forms of government, the good order and evolution of nations depend upon social sta-

bility ; which itself depends upon purity, and is conserved by proper and well-kept marriage. Civilization, also, manifesting itself largely in governments and resting upon social order, advances or recedes, in equal steps, with public morals ; and becomes, therefore, progressive or retrograde, according to and in proportion as marriage is duly contracted, purely preserved, and seriously regarded.

Marriage reaches, even in this life, farther out than the bounds of social order, government, and civilization ; even to every human person. It affects his individual character and interests ; so that, as child or parent, he, upon the whole, is educated or educates, prospers essentially or loses, in proportion to the purity of the marriage that forms his relations. In its effects upon character, marriage reaches as far as the whole development of character. So long, in time or eternity, as character marks and measures the person, so long does and will this influence continue and show itself in purity or impurity of heart. Though marriage is temporal, its effects are everlasting. Though, as a union between persons, it is confined to the period of mortality, as a cause it operates upon persons so long as they exist, in both time and eternity.

Hence, in dealing with marriage, the Christian Church has both a temporal obligation and an immortal duty. She must treat it, both in relation to public morals on earth, and to personal salvation on earth and in heaven. Happily these two lines are in source convergent, while in proceeding they keep to the same level. There is to be set forth, therefore, only one general and complete Law of Marriage ; which will

alike conserve public morals, purify and exalt personal character, promote common and individual good, help forward human progress, and minister to individual salvation. The Church, therefore, may come before the communities that environ her as a "minister for good" in "things temporal," and may guide and teach her children in respect to the spiritual benefit of good morals ; while, in point of fact, the law she sets forth will be one law for all.

Both Church and State should pursue concurrent methods in relation to marriage. Both are institutions under authority, and should form their codes upon principles that proceed from the authority. Be the authority either God, or "tendency that maketh for good," proceedings under it should concur, and marriage should by both be ordered so as to promote public and private morality.

"Law has its seat in the bosom of God." This is true whether a personal God be meant, or any philosophical equivalent for God be chosen. All agree that law must start from some adequate source, and be maintained by some sufficient power with persistent force. The first manifestation of law is the expression of a general principle. The law of marriage should therefore begin with a manifest principle. Like all such principles, it must be an axiom. Its statement should carry conviction. It should be evidently true to all minds, so far as it is an intellectual proposition ; while, so far as it is moral, it should be evidently obligatory upon all consciences.

Now the principle of marriage is the family. While mankind, in respect to the two sexes, is correlated with

animals and all organic existences, and indeed even with inorganic matter, especially in the department of chemistry ; yet it is distinguished from all, prominently and always, by the family relation. Though this relation starts at bodily union, and begins to exist only at the consummation of marriage, and thus is linked to all the lower orders of organic and inorganic life, or existence; yet, as it is a union between persons, it thus affects for good or for evil the whole personality of those who enter into it. These persons have each a soul and a spirit as well as a body.\* Marriage therefore reaches every person's body, soul, and spirit. It reaches these directly, in all who enter into marriage, and indeed all who are guilty of taking its privileges while rejecting its duties ; while indirectly it affects the bodies, souls, and spirits of its own children, and influences by its presence and example many others in innumerable ways and manners.

This family relation—which on earth exists only between the human male and female and their offspring, and is the first distinction of man above all lower forms of mortal existence—may have a higher correlation. “And God said, let us make man in Our image, after Our likeness, and let them have dominion . . . over all the earth . . . So God created man in His image, in the image of God created He him ; male and female created He them.” Gen. i. 26-27, v. 1-2, ix. 6. Enlightened reason shows that the human female is *subordinate*, but by no means *subject*, to the male. With this natural conviction and assurance, the slightly

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\* I Thes. v. 23.

detailed—perhaps in some respects figurative—narrative of the manner of their creation agrees. The essential facts of their creation, involving of course their original and continuous relations, are not figurative. The woman was not born of the man. She proceeded from him ; “ woman . . . was taken out of man,” ii. 23. Marriage was at once instituted. “ Therefore shall a man leave his father and his mother, and shall cleave unto his wife, and they shall be one flesh,” ii. 24. This word of God is in full accordance with scientific discovery and knowledge. In its department of physiology science shows clearly that the consummation of marriage effects such a union, that the woman receives and assimilates into her own circulation the blood of her husband, and thus becomes “ one flesh ” with him. Every intelligent person, therefore, whether he believes or disbelieves the Bible, assents to and accepts the fact that marriage makes, into “ one flesh,” the woman with the man.

One object of this union was the procreation of children. In this fact also science and the Word are agreed. “ And God blessed them, and God said unto them, be fruitful, and multiply, and replenish the earth, and subdue it, and have dominion. . . . ” i. 28. This object is mentioned evidently because it was of chief importance. It does not exclude other objects. In like manner, the words “ one flesh ” express the primary or bodily union effected by marriage. It does not exclude further union of soul and spirit. Enlightened reason, by right, interprets scientific discovery. It does not stop at the material fact of the physical or fleshly union. Indeed, defining *physical*

etymologically, reason perceives that the *natural* union of marriage may, and in many points evidently does, reach through the whole nature of both the human persons with their offspring.

Materialists, of course, see nothing in this but a development, or rather evolution. They conceive that soul and spirit are natural products of the body, as itself is a mere stage in evolution. Psychologists deny this materialistic view, upon the principle that "only like produces like ;" while pneumatologists go still further—yet upon merely philosophic grounds and applying the same principle—and claim that besides soul man has evidently a distinct spirit. Hence they claim that man is threefold in natural constitution ; that he possesses body, soul, and spirit, each distinct from, though united with, the others, and each having its own faculties and functions, though reciprocally interpenetrating and effecting each other. The unity of this threefoldness is personality ; which is not another entity, nor a constituent of the three, but rather that oneness which links them, of which they are mere channels of manifestation, which exists in every part or in the whole indivisibly, and is simply the unity of human threefoldness.

This view of personality is necessary in order to clear apprehension of the whole reach and bearing of marriage. As it is a union of persons, it reaches to the whole personality. Though, in point of order, marriage begins at unity of flesh—"they twain shall be one flesh," S. Matt. xix. 5; yet, through thought, affection, emotion, and will, it reaches the soul ; while the spirit also of both parties responds, in

accord or discord, to each other, through moral influence, devotional thought and feeling, and perhaps by functional union in both soul and spirit.

The functional union of bodies in marriage is obvious and universally allowed ; but there are two schools of opinion respecting functional union between souls and spirits. The first school are the Creationists. They deny functional union of soul with soul and of spirit with spirit. They assert that soul and spirit are indivisible units, and therefore cannot, like molecular flesh, emit seed. Hence they believe that every human birth is accompanied by a distinct creation of soul and spirit, or rather of soul-spirit. This, of course, leaves the parents only parents of the body, and not of the other manifest channels of personality. Marriage in this view is, therefore, not entire personal union, but union of bodies only.

The opposing school—the Traducianists—reply that psychical and spiritual characteristics of parents often manifest themselves in children ; that these characteristics are in quite as close resemblance as bodily features ; and that, like bodily features, they show themselves in peculiar combinations, and even skip generations, appearing and reappearing in their course, sometimes showing themselves in remote descendants. They argue further, that we actually know nothing about the constitution of soul and spirit ; and that, even if they are indivisible units, we cannot say that they have no power of propagation ; that power may not be, like bodily propagation, through spermatic particles, and yet may none the less be actual propagation. They quote the Nicene Creed both as positive

Christian confirmation and philosophic justification of their argument. It confutes the objection to propagation by spirit, by facts which Christians must accept and which philosophers must allow as a possibility. In that creed the Son is declared to be "begotten of the Father." They appeal to S. John, who speaks of Jesus as "the Only Begotten of the Father," "the only begotten Son," i. 14, 18, and refer to our Lord's own claim to be "God's only begotten Son." iii. 16, 18. Now "God is a spirit," S. Jn. iv. 24, and yet the Son is "begotten, not made." Hence the Traducianists insist that marriage is a union of human persons, reaching therefore beyond the flesh, including spirit, and *a fortiori* soul also.

They answer the Sadducees' question, "Whose wife shall she be in the resurrection?" by restating our Lord's answer, 'The marriage relation is for the mortal existence only, and as a union ceases at death; but that does not militate against the fact that it is a thorough personal union so long as it lasts.' Though death dissolves the personal union of marriage, it is none the less entire to the end of the mortal period of life; or so long as it lasts.

The reason why marriage does not reach into the life of the resurrection is not given. Our Lord simply declares the fact, "For when they shall rise from the dead they neither marry nor are given in marriage." S. Mark xii. 25, S. Matt. xxii. 30, S. Luke xx. 35. The fact is thus established upon the testimony of the Godman, Who alone knows both worlds in time and eternity. The reasons for the fact—*i.e.*, its harmonious relations with the everlasting life and reciprocal com-

union of men and women—we do not know now; but we may know, when we shall see them living together in all love and purity, as citizens of Christ's everlasting kingdom, and as children together in the one organized and perpetual family of God the Father.

Another objection to the tri-partite union of persons in marriage is based upon the "untimely fruit." It is argued that the begetting or generation must be all at once. Hence body, soul, and spirit must be begotten together; and therefore a still birth, or untimely fruit, or an abortion, must be the destruction of one who has been begotten by the soul-spirit. This, it is argued, is impossible; because the soul and spirit are naturally immortal, and therefore could not beget a destructible progeny.

The answer is, that we do not know about natural immortality definitely and completely; nor do we understand the mode or even time of spiritual or psychical generation. Hence, for want of data, we cannot argue about these points. Moreover, the body is immortal as truly as the soul and spirit. As they are naturally immortal, so is it. The body dies, it is said, while the soul-spirit merely passes on to another sphere. The answer to this is a simple denial. The person goes down into death; the body only sleeps, while the soul-spirit itself is "in prison." Death can be as truly predicated of the soul-spirit as it can of the body. Death is not destruction of life; it is merely a stage in the progress of life; an intermediate stage, between two phases, scenes, and periods of one immortality.

The abortion therefore is equally difficult to explain in respect to body as in respect to soul and spirit. The body is plainly generated. It may cease to grow at the first "cell," or it may mature and be born complete. It may cease to live at the instant after generation, or it may cease to live at any instant between generation and birth. Now, the body being naturally immortal, it might be as well said of it as of the soul-spirit, that its generation is immortal. Hence the primary cell would be immortal, and any form it might attain would be immortal. The conclusion to be drawn from this line of argument is, of course, shocking and absurd. It is only pursued in order to show that we actually know nothing definite respecting the human person until he is naturally and entirely born. His generation is an unsolved mystery. We only know that persons beget persons, that persons are born of persons; and that personality is tri-partite, consisting each of a body, a soul, and a spirit; while the unit of personality is simple, not constituted by three other units, but manifesting itself through them combined or through each. In the act of generation person meets person, and their reciprocation evolves another person who is distinct from either, though only separable from the compound life of father and mother when born into the world.

This point should be carefully considered. The child is not merely separated from its mother when born into the world; it is separated from the compound life of both father and mother, which compound life is in the foetus from the instant of generation, and continues such until a full person is born and

separated. Hence “untimely fruit” is not another person than father and mother; and, persons only being immortal, no argument can stand whose major premise is a predicate of immortality to every product of generation from its first instant. Immortality is clearly a natural gift bestowed—by God or “evolution”—upon persons only. Hence what is less than a person cannot be immortal; nor can any argument stand which predicates immortality of any form of existence less than a complete and whole personality.

From these facts and deductions it follows that marriage is a union between two persons, and that the intercourse of marriage involves naturally the very body, soul, and spirit of each person; and hence that the marriage union is not merely material, but psychical and spiritual also. Although its operation is confined to the period of mortality, yet its natural fruit is immortal; while effects, of which it is cause, will go on forever.

This is the Traducian view. The view of the Creationists has by far the larger and more weighty names in its favor. But it involves the unscientific assumption of separate creations at every birth, with all the consequences of that assumption. The Traducianists are at least consistent with science; especially with that first scientific principle, that what can be accounted for and explained naturally should not be assigned to the supernatural. This view also keeps marriage within the scope of philosophy, or natural reason; and holds its obligations over all who recognize moral duty, be their ground either God or “tendency.”

## CHAPTER II.

### THE PRINCIPLE OF CANON LAW.

Marriage comes under science at physiology, under metaphysics at psychology, and under religion at pneumatology. As the latter is the higher department, so also is it the ruling one. As the human spirit dominates the soul and through it the body also, so does religion, which is primarily spiritual, descend through the soul into the body. The bodily senses, with all their organs, faculties, and functions, are subordinate to the soul and subject to its will, as well as moved by its thoughts and emotions; while the soul is subordinate to the spirit, and rises or falls, morally and otherwise, according to the exaltation or degradation of the spirit. The threefold union of marriage is cognized by the Church, and may be included in her laws, because her domain is pre-eminently spiritual. She approaches man through his spirit. She touches the body indeed with her sacraments, and the soul with her doctrines and devotions; but both these lower channels of personal manifestation are dominated—even naturally—by the higher channel of the spirit. Hence the whole, unit-person, is best reached through the spirit. Therefore the Church, in performing her spiritual duties, addresses herself to the whole man. Thus, not merely does she offer and give in the name

of the Lord grace to infants, and instruction to youth, but she imparts the whole of the Gospel, intrusted to her, to those of full age, who are "men of good will." She orders her worship, her doctrine, and her canon law for threefold human nature; but the spirit of man is her way of entrance into his whole person.

These are points to be kept in mind in all discussions of moral or even of utilitarian questions; for while the Church in one direction "lays hold on God," and thus reaches to the loftiest aspect and farthest bearing of all questions, she also, in the other direction, "has to do" with living men in living generations, and must consider morality with moralists, and practicability with utilitarians. In other words, she should not only "rightly divide the word," but she should order her discipline wisely. Whatever is definitely Divine law, she can no more pare away, or compromise, than she can diminish the truth which is committed to her trust. But, on the other hand, if she adds to the Divine law, or stretches her canons beyond the scope of its literal enactments, she can look for submission only from her most faithful children; she may find the mere moralists opposed to her, while the utilitarians will all pass her by. Much of her good work as "the salt of the earth," with much of her conservative support of social order, may be impaired, should she demand more of contemporary persons or society than the Divine law, in terms or clearest implication, demands.

The Divine law expresses itself in two directions. The law of nature is Divine, no less than the revealed law. The first, when clearly set forth, will rule all

honest and sincere persons. The last will only be accepted by Theists—*i.e.*, believers in One God. The Church, as the missioner of Christ, will proclaim the revealed law to the world, and enforce it among His followers; but, as a promoter of mere morality, and as a friend of high utilitarianism, she has also a temporal mission amid the civilizations, the nations, and the varying organisms of society which surround her in places and ages. All these relations of the Church should be duly and proportionally considered, and given their rightful force and bearing when she formulates her canons, or frames statutory law.

From very early times—though not, I think, from the very earliest times—the Church has laid the boundaries of canon law, sometimes, beyond the outer walls of the definite and explicit law of God. In these cases she has incorporated a new principle, and encompassed a portion of the domain of casuistry. Casuistry is not in itself a department of law; it is rather the application of legal decisions to particular cases. In *applications* of the moral law, that principle is pertinent which S. Paul enunciates, “all things are lawful unto me, but all things are not expedient.” I Cor. vi. 12; x. 23. This incorporation of the principle of casuistry into canon law has never gained Catholic sanction; but, in relation to some points, it has won only less than universal consent.\*

The time has now come when the Church cannot in her canons successfully commingle, or rather confuse,

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\* This will remind many of the widely extended canonical prohibition of marriage with a deceased wife's sister; which will be considered hereafter, when historic canon law comes into view.

the *principles* of law with its *applications*. The American Church particularly will find such commingling impracticable. Even her own loyal and obedient children feel oppressed by canons which go beyond the clearest sanctions of Natural Law, or exceed the literal injunctions, specific rules, and obvious principles of Revealed Law; while her power over public morals can be strong, extensive, and expansive only when she obviously demands of society just so much as, and no more or less than, God in nature or revelation clearly requires. For the sake, therefore, both of internal harmony, and of due weight and influence outside her borders, the Church should be as careful in confining her canons within the limits of Divine enactments, as she should be bold and clear in enunciating and enforcing them.

The two lines of her mission on earth may be followed together. She can be the witness to Christ in all her higher functions; while, at the same time, she can be a power for good in her every day and generation. In morals, her efficiency, both without and within her borders, will depend largely upon—indeed, will be proportionate to—the exact correspondence of her canons with the Divine law. For though her canons, as such, may not directly operate upon “the world;” yet they will so pervade her life, and that of her children, that her influence will correspond to them. Although the world hate her, it will respect her so long as she keeps within the limits of her authority. She will best promote her own growth, and extend and deepen her outer influence, by close adherence to the very terms of the Divine law.

## CHAPTER III.

### STATISTICS.

Keeping in view the principles succinctly set forth in the preceding chapter, we look first at the present moral condition of society—especially, though not exclusively, of American society—in respect to marriage. One way of viewing this condition is by gathering and publishing the statistics of marriage in comparison with both prevalent legitimacy of birth and the number of divorces. These statistics have been already carefully gathered and widely published. It is unquestionable that they show a fearful condition of public morals. Consequently, those who believe that all prosperity and progress depend upon the good morals of general society, as healthy growth depends upon a sound root, are becoming widely moved and deeply stirred, in view of the growing disregard of the sanctity and perpetuity of marriage. They are fearful lest society become corrupt at its base, and thus national stability imperilled, while the advancing civilization be stopped or even turned backward.

Unfortunately, however, statistics of evils have a subtle tendency to deaden sensibility to the very evils they expose. Many, appalled at their magnitude, lose heart of hope, and despair of ever correcting them. Many are unable to see, or indisposed to consider, the

connection between the evils and their consequences. These latter are more ready to "take the chances," than they are to contend against evils. They say "We have got along so far so well that we may trust Providence, or the evolute tendency for good, or some other hidden corrective and preservative forces, to save the community from utter corruption, and to keep society from dying at its roots." Many others—and this class is perhaps the most numerous of all—question the significance of these statistics. They say, "The force and weight of these statistics depend upon the prevailing moral sentiments; how do we know that these sentiments are sound? Prevalent moral sentiments are often the mere product of tradition, insufficiently based at first and handed down without examination. The common conscience is moved by them without immediate study of natural or Divine law.

"How do we know, therefore, that there is any such sacredness in marriage as to require that it should be always kept inviolate? or any such necessity of its perpetuity as to require that it should continue between the parties so long as they both shall live?" This latter numerous class include, but are not confined to, avowed "socialists." The principles of the socialists are spreading far beyond the societies they are rapidly setting up, and as rapidly pulling down. The question of marriage is undergoing a radical inquiry, not only among those who already wish it were abolished, but among multitudes of reputable and even moral persons. It is more than a fashion among thinkers and talkers, in all ranks and of all degrees, it is a tide of the time, which now makes radical inquiries both

common as to extent, and popular as to influence. On this tide are floating the multitudes—of men chiefly, but not of men exclusively—who are asking themselves, or discussing—cautiously as yet—with others, the question, whether marriage has really any moral quality, and whether the common sentiment in regard to it is not a resultant of traditional error in morals, which has floated into the present time or been transmitted by heredity. The cultivated portions of these classes are not yet ready to abandon the amenities, the attractions, and the restful repose of domestic life ; but they do account these comforts as the chief end and object of marriage, and already look upon divorce as a natural remedy when these comforts are not attained. Statistics of evil are without influence with all persons who question the principle upon which the evil is predicated. In fact, and in the direction now in view, these very persons, who either openly or otherwise call marriage into question, are the ones who themselves resort to divorce, or tacitly accept, perhaps even approve it, in others.

Moreover, the Church, as a conservator of public morals, is in this, as in all other departments of her mission, directly responsible to God. The point of consideration with her is not so much the magnitude as the reality of the evil. Her plain duty is to take her stand openly before the world in respect to the principle of divorce. If it is an evil, it is such as truly in one case as in many thousands. Though her children, as moral persons sensitive against evil, may be moved by the statistics, which show an alarming prevalence and growth of divorce ; yet this sensitiveness

should not be depended upon, nor indeed considered, in a case like that under review. If divorce is contrary to God's law, as set forth in nature and revealed in the Word, then it is a sin, and the Church should condemn it, with clear utterances and solemn tones. If it is absolutely so contrary, then her plain duty is to condemn it utterly, and neither sanction, recognize, nor allow it in any case or under any circumstances whatsoever. If, however, God, in nature or in revelation, permits divorce, it is equally the plain duty of the Church to declare and hold on tenaciously to that permission, fully so far as but no farther than God gives it.

This simplifies the matter, and brings it within the scope of all intelligent and honest persons. It is not necessary for them to know nor to consider the prevalence of the evil. Its mere existence is enough for them. Be instances few, or be they many, the question is one.

The Church's first postulate is, "I, we, believe in God." Hence law, whether natural or revealed, is in her view Divine. When made known, she should promulgate it by authority, and shape her own statutes, or canons, upon it; and order her judicial, or disciplinary, course in accordance with it. In respect to natural law, however, the Church has to resort to ordinary human wisdom. She has no other means of learning and knowing about natural law than that which is possessed in common by human persons. She may, indeed, look for special guidance from the Holy Ghost, Who undoubtedly presides in her councils; but she is not authorized nor empowered to enforce any

arbitrary decrees. If she formulates any application of the natural law, she owes it to her own consistency, as well as to the respect due to inalienable personal human freedom, to set forth clearly and fully the connection between her every specific canon and the principle of natural law from which it may be derived.

Therefore it is an open question, or at least must at first be treated as an open question, by both philanthropist and churchman; whether natural law treats of marriage, and if so, how it defines marriage, as well as what it inculcates touching its continuance, or either permits or enjoins respecting its dissolution. On this common ground of the practical reason stand at first together—having equal rights and free judgments—both those who merely wish to promote the temporal good of mankind, and those who primarily seek to find and follow the Divine law. The latter keep equal step with the former to the end of their march; but after promoting the temporal good of mankind proceed further to show and lead the way, in the same line, upward toward the eternal good, with the everlasting benefit of good morals.

“Materialists” may again be left out of consideration, because they have no room for morals in their system. They can only consider marriage in regard to the health and comfort of living human bodies. They treat it according to “scientific”—so called—principles; and promote or dissolve it solely as it appears to influence this fleeting temporal existence, though even sound materialism might be shown to accord, in effect, with high morality in regard to marriage. In the same manner, also, may the “Evolu-

tionists" be left out of consideration. Evolution, as a principle of progress, cannot, of course, be denied. Nor can its application to marriage be ignored. Doubtless there is an evolution in morals, as there is in nature; but this legitimate and true evolution consists of the application of fixed principles to varying circumstances of progress. There is no more change—evolute or otherwise—in the principles of morals than in those of material atoms or organisms, or indeed of persons and their relations. Principles remain the same, however their applications may rightly or wrongly vary. The evolutionism, which has no room for morals, is that system of philosophy which conceives all existence and progress to be merely the passing effect of irresistible "force," which, coming up from the "Dark Unknown," rolls on through light and life, evolving everything spontaneously. Both materialism and evolutionism have no place for morals, because they have no place for human choice and free-will; and consequently none for responsibility about, nor indeed recognition of, either right or wrong.

Still it might not be hard to show that a consistent evolutionism, one that would promote the greatest good of "the fittest to survive," should support monogamy, and make marriage ordinarily a life-long union.

## CHAPTER IV.

### MARRIAGE, A MUTUAL CONTRACT UNDER NATURAL LAW.

Nature reveals the principle of marriage in the very lowest form of even inorganic substances. The affinity between senseless materials—*e.g.*, acids and alkalies—when stimulated to activity, effects union between them by contact. Two simple elements come together, combine, and produce another which is a compound substance, that has distinctive characteristics, different from either of its components, yet resolvable back into its original elements. Nature exhibits the same principle in every step of her progress. Organic life exhibits the sexes, in both vegetable and animal form, making them more and more apparent as advance is made toward the highest types of animal existence. Man, as an animal, stands at the head of creation.

If man were an animal merely, he would be male and female in the highest and most varied natural development. His very elevation, however, makes society necessary for his continuance on earth; for without society men would “bite and devour” one another until they “were consumed one of another.” Mere intercourse might propagate the race; but it could never ascend beyond the wildest savage state; and

could only live at all in single, or at most dual, isolation. Society alone makes progress possible. Because men are social, nations exist, and even the Church continues.

But society depends upon the family. The family, not the individual, is the social unit. It is the root out of which society grows ; it is also the foundation on which society rests. These facts are principles always to be kept in view, and necessary to be announced and accepted before the bearing of Natural Law upon marriage can be duly considered. Now, nature shows that the human male and female enter by marriage into something higher than the sexual relation. Though this entrance is the door of natural marriage, it is no more the whole, nor indeed the chief part of it, than the door is the whole of a house that shelters a home. Marriage makes homes, and the family inhabits homes. They are alike exclusive, private, and one. They may combine into larger organizations, but they are in themselves normally indissoluble. They may be destroyed, but they cannot be divided into integral constituents. They may congregate in numbers, but every number will be its own integer.

No doubt every man and every woman is a unit, in the sense of singleness as a person or individual. This unit-personality possesses freedom of will, and consequently is capable of doing right or wrong. Every human personality is distinct from every other, but it is also inseparable from the whole race of humanity. Hence personal independence extends only to the right of free choice and action against the mere arbitrary will of another. Christianity—the sole charter

of personal liberty--teaches that God Himself gave, ever has supported, and forever will respect, human freedom. While He rules, and must for the order of creation rule, according to the counsel of His own will, He does not compel man to do His will. "Come now and let us reason together," expresses the relation He has established with mankind. He would have all men perceive the wisdom of conforming their human wills to the perfect and ever-consistent Divine will. This personal liberty of every man, while assuring his freedom of will before all other men, and even before God Himself, forever, does not remove the further fact of the reciprocal interdependence of all mankind, and of their common dependence upon God. This is true, indeed, whether the true God or any other Supreme power, or even tendency, be meant. Personal liberty belongs, while interdependence attaches, to man. Neither should be denied; nor should the two be confused. Because man is free as to his will, and subject to personal consequences of his use of this liberty, he is none the less, as to his entire personality, interdependent one with another.

Marriage rests upon the interdependence of mankind. Individual men or women are free, either to contract marriage or to refrain; but when they enter into the contract, they incur all its consequences and liabilities. The consummation of marriage produces an organic relation which is as actual as any other combination, and as inseparable from its consequences. For example, a man is free to stand before a fire, to contemplate it, to derive any benefit it can emit; but he cannot enter into fire and come out at will, without bringing

upon him or in him the effect of the burning. The merely physical union of marriage produces natural results and consequences which are as real as burning by fire, or as real as combinations of before separate substances. Hence the man and the woman who consummate marriage, or unlawfully do that which only marriage sanctions, thereby effect a personal union between themselves which puts each one into permanent relations with the other. They are no longer independent of each other. As to the marriage relation, they are henceforth interdependent one with the other. No escape is open to them. They cannot separate and be as before. This fact is a natural fact. It proceeds from a law of nature. Like every natural law it proceeds peacefully, and combines harmoniously with all other operations of natural law, so long as all the requirements of nature are fulfilled ; but if, in this regard—or indeed in any other—the law of nature be violated, the consequences are certain, apparently pitiless, even inexorable. A person who violates the natural law of marriage, suffers as surely, and as naturally, as he who casts himself into fire or water. Nature has set thus its own watch over purity. The acceptance of the family relation is the price demanded by nature for sanctifying the bed. Continuance in that relation, with fulfilment of its duties, is the only sure conservator of peace and quiet, both personal and domestic. The continuance extends to the term of mortal life. Death dissolves the marriage bond. Nature only shows the path that opens out fully at birth and closes with the grave. We only know through nature that marriage is temporal, but we know that

during each mortal life it holds the married pair in an ordinarily indissoluble bond. Whether anything but death can break the bond will be considered further on. Now the fact and consequence of natural marriage only are in view. It imparts the blood—"which is the life"—of the man to the woman, and she becomes "one flesh" with him; not reciprocally, for she does not plant her blood in him. Hence she is brought into consanguinity with him; and his blood-relations are henceforth hers, while hers are not his. Natural science perceives this, and shows that by natural law marriage effects physical union between the man and the woman.

As marriage is entered into between two free persons, it is in its inception a *mutual contract*. It is such naturally. This original feature is never lost by it. However it may become combined and appear in any complex social organization, and whatever other features it may exhibit, it never loses its characteristic as a mutual contract. Being a contract between two free persons, it imposes obligations and duties upon them both. These are not alike, because men and women are not the same; nor do they stand in the same relations toward others. That which belongs to the masculine is man's, and what belongs to the feminine is woman's. Their several faculties, dispositions, and natural proclivities direct their domestic life; while outside relations are fulfilled differently by either sex. Happiness in married life depends upon the maintenance of due order at home, and due relations abroad.

If a code of laws were attempted for the establish-

ment and conservation of matrimonial happiness, it would have *first* to define the natural distinctions between man and woman, and *then* formulate rules for their living together. After that, every married pair would have to understand these distinctions, learn these rules, and be exact in their daily application. This of course is impossible. Experience shows that it is useless to attempt to secure domestic happiness, or even peace, by the mere observance of rules. Their perfect conformity with natural law would not supersede the errors of ignorance, nor the bias of self-consideration or self-will; nor indeed, because they are outside and not within the minds and hearts of the parties, could they secure harmonious intercourse one with the other. Nature has implanted in all mankind a faculty which indeed recognizes law, but encompasses it also, and pervades and soars above it. This faculty is love, whose function is charity. Now love, when it exercises its natural function, delights in self-sacrifice. It does not dispose one to self-sacrifice upon any economical calculation. It does not reckon the cost and profit of self-sacrifice. It does not calculate that a certain kind, degree, or measure of self-sacrifice will deserve a relative proportion of reciprocal self-sacrifice. But love makes a whole offering of self to the one beloved, and is oblivious to anything that clouds the self-satisfaction or delight of its own expression. Between two parties thus self-devoted, the natural duties of marriage would be observed, so that the man would take his due position at home or abroad, and the woman hers; while the rules of happy living would be followed impulsively, and kept not

only according to knowledge, but even according to that intuitive wisdom of love which perceives the right and does the best without thinking about definitions, proportions, and relations. Thus nature sets up its guard over domestic happiness, and secures it by pure love.

Although marriage in its first aspect is merely a mutual contract, yet, from the fact that love is its conservator, it follows that this mutual contract, underlying all forms of marriage, should be duly estimated and preserved in the privacy of home, as well as recognized abroad when the family enters into and becomes a constituent in enlarged and varied social organizations. Indeed, this recognition of the bond of love will strengthen, even though it hide, the mutual contract; while, by consequence, it will help sustain social stability.

The mutual contract of marriage in its physical aspect is not dissoluble at the will of the parties, as we have already seen, for the reason that they are so personally united by the consummation of marriage that they cannot, like other contractors, return to the same state and condition in which they formed the contract. It now appears that perfect love, which is the glory and vitality of marriage in its psychical aspect, would be impossible upon the theory that marriage is dissoluble at the will of either or of both parties. That complete and reciprocal self-sacrifice, which is perfect love in expression, would be chilled to death by the very thought of dissoluble marriage. One may contemplate its dissolution at the grave, sustained by mere bravery or upheld by faith, but its dissolution during both lives

would be regarded with horror, because it would involve that most dreadful of all things, the death of love.

Nature, therefore, both physically and psychically, declares marriage to be a life-long union ; and gives no intimation of its dissolubility. It must be confessed, however, that the actual mutual contracts of marriage are very different from those that are ideally perfect. If perfect love with faithfulness really did prevail, nothing could then occur to raise the question of dissolubility ; but in fact it does not universally prevail. Some, unhappy in their experiences or narrow in range of observation, may say that perfect marriage never exists, and is seldom even approached. Without allowing this cynicism, or even while asserting the contrary, it must still be admitted that marriages are often unhappy, often ill assorted, often made tyrannical, often turned into sorrowful, heart-breaking, life-wasting endurances, and even sometimes violated in respect to purity.

What does nature teach respecting the mutual contract of marriage when these evils occur ?

The physical union of consummated marriage, which makes the woman "one flesh" with the man, imposes on her the obligation to respect not her own person merely, but his also. So long as he lives in the flesh—*i.e.*, during his whole mortal life—she is physically one with him. She is no longer free to form another marriage contract, because she is no longer her own, for he is in her and has exclusive rights over his own flesh. If he die these rights naturally cease, because nature teaches nothing positive beyond the grave. While

he lives she cannot be married to another man. If she be unfaithful, she thereby commits the evil of impurity, and confuses her husband's blood. He may not condone, much less allow, this impurity in her, because nature gives him no right to enter into the horror of a mutual confusion of blood with another man. The only natural resource of the wronged husband is to put away his wife. She has broken the mutual contract, and thereby violently destroyed his rights. As it is a fixed principle of all law, that the guilty party has no right to avail of the consequences of his own guilt, it therefore follows that the wife, who is justly put away, has no right to enter into another marriage contract. The principle here involved is, however, moral and not simply physical. For aught that nature reveals, the divorced wife is so separated from her husband that another marriage might be entered into as if her husband were dead. She is physically separate from him. If she be physically joined to another the result becomes a merely successive marriage. But morally she would commit a crime against her living husband, because her violation of the mutual contract would not exempt her from its obligations. He would be unable to fulfil the contract any longer, because he could only continue it by confusion of his blood with that of another living man. The unfaithful wife, therefore, does not merely set her husband free of his contract, she makes it impossible for him to fulfil it. Yet for herself there is no natural relief. She must bear her iniquity, with its flow of consequences.

The husband, on the other hand, cannot do the same wrong to his wife. If he be unfaithful, he does

not thereby vitiate her blood. Consequently he does not dissolve the contract. It is possible for him to perform the duties of marriage to his wife without physically contaminating her. Morally, however, the unfaithful husband is as guilty as the unfaithful wife. He violates the spirit of the mutual contract as she does, but the physical consequence is different. Physical science, in viewing natural law, takes no account of morals. It is by physical science alone that we learn that the man and the woman are not alike in marriage. One gives and the other receives; they do not reciprocate.

Natural law, however, does not stop at physical science. There is a natural instinct, apparent in all men and women, which bears upon the mutual contract of marriage. It varies in force, delicacy, and intensity, but its essential character does not change. It demands mutual fidelity in the marriage relation. When, however, unfaithfulness occurs, it is found that the natural instinct of the man differs from that of the woman. It impels him to take the life of both parties, while, if there is any difference in his righteous wrath, it is more against his wife than her companion. This seems to him the natural remedy for the irreparable wrong. In woman, however, this instinct takes another course. She may wish to leave the man who is unfaithful to her, but she is not impelled to commit violence against him. She is rather disposed to palliate his offence, and may not even lose her love for him; but the other party is the object of her hate. She is naturally impelled to kill her. Of course this natural instinct cannot be innocently followed out by

either party. Social order cannot permit it. Human laws forbid it. Divine law contravenes private vengeance. The instinct, however, exists, and should be considered, even if disapproved. It is remarkable that men and women differ instinctively in their views and feelings respecting unfaithfulness. Nature, therefore, shows that men and women are different, not only physically but psychically. Hence every attempt to put them on the same plane fails naturally. Their rights differ, as well as their natures. Their natural rights are on one line to the man, and on another to the woman.

Are the sexes, therefore, not equal? This is the usual question, and whoever is disposed to find an answer may indulge himself in an attempt to draw together two parallels. Man is man on one parallel. Woman is woman on another parallel. The possible with one is impossible to the other. They are neither equal nor unequal, in respect to marriage at least; they are simply incomparable.

In respect to other evils than unfaithfulness, nature has also some lessons. Cruelty may make the marriage relation intolerable. Abandonment may make the fulfilment of its duties impossible. Intemperate or other disgusting habits may make the intercourse horrible or violent. Crime may cause a separation for long years, or even for life. The innocent party, in these and other cases, may be subjected to inexpressible suffering and sorrow. Nature, however, holds on inexorably to the fact of the oneness of flesh. None of these evils and wrongs breaks that. Separation is only a partial remedy. This nature allows to the suf-

ferer, be he man or woman ; but the mutual contract stands, so long as either party lives. One's life may be saved, or made tolerable by " separation from bed and board," but nothing more can be permitted, according to nature, for any evil short of unfaithfulness. Feelings may demand, and grant, sympathy ; but right judgment should rule actions. Right judgment in this matter must accord with the natural law, that proceeds from and is throughout consistent with unity of flesh.

The general force and application of this argument are clear and strong, but are there not some exceptional cases, and has not nature some provision for such cases ? Must the wife, who is separated justly from her husband because of cruelty, abandonment, excessive intemperance, crime, and the like, be debarred from another marriage ? Nature certainly does teach that the final separation by death releases entirely from the marriage ; does not separation for good cause, when actually final and complete, make the husband "as good as dead ?" It cannot be denied, upon scientific—*i.e.*, natural—grounds, that the relation between actually and finally separated couples corresponds physically to the separation by death. If the separated wife marry, and remain faithful in her new relation, she certainly does not cause "confusion of blood." She apparently enters into a naturally lawful succession of union in the flesh. She cannot, indeed, go back to her former husband without "confusion of blood ;" but faithful continuance in the second marriage does not itself make that confusion.

So far as natural marriage is psychical, it affects the

feelings, emotions, understandings, judgment, and will. These are to be taken into account; but, in the exceptional case under consideration, all these have been outraged. Indeed, the outrage is the valid cause of the original separation. A second marriage, therefore, does not, in this case, violate the psychical essence of marriage; but it may be entered upon with a pure heart, right-mindedness, honest feeling, and true warmth of genial emotions.

Of the spiritual union of persons in matrimony nature takes no account. Science can neither find nor test the *pneuma*; while mere intellectual philosophy stops short at the soul. If, therefore, it be allowed that nature sometimes permits separation, with right to marry again, it is very clear that she discourages the practice, and only permits the exception in rare and very peculiar cases. This exceptional permission should, however, never be advanced to the power of a general rule, for then it would imperil the due reverence for marriage which even nature inculcates. It would also impede the practise of that patience and long endurance which palliates always, and often cures, evils in matrimony.

This point will come up again both under the civil contract of marriage and under marriage as an ordinance of God.

We have seen that, by natural law, unfaithfulness by the wife makes it impossible for the husband to fulfil his part of the mutual contract. He would commit a crime against nature by doing so. Hence the universal consent to divorce in such cases. The husband is freed from marriage. He becomes unmarried,

a person-sole ; hence he may marry again. But the woman remains one flesh with her husband, and cannot escape that bond so long as he lives. Nature shows no physical deliverance for a wronged wife.

This may seem hard ; it may even seem partial. They who think thus will—if Theists—be tempted to call the God of nature hard, or partial. If they are evolutionists, or free thinkers of any other kind, they may attempt to cut the knot of hardness or partiality by disregarding the unity of the flesh, and setting parties free from present evils in utter rejection of physical law and complete defiance of consequences. They who believe in the true God will adhere to His law of nature, and suffer themselves or teach others to suffer all mortal ills with patience, and to seek for remedy not by escape, but by “grace that helps in time of need.” Those who do not take account of God, but merely endeavor to believe and act according to a high sense of natural order and consistency, will also bear these evils, and teach others to endure, because it will be best for them and for all “in the long run.” It is better to bear any ills under the “mutual contract,” than to dissolve it wilfully. Moreover, this firm adherence to its perpetuity, if it be general, would alleviate many matrimonial wrongs and remove many difficulties. They who adhere to the natural law in this regard, will find many ways of making hard lots tolerable ; and will be prompted never to aggravate, but always to minimize, their griefs. One of the fruitful sources of matrimonial unhappiness is the error that nature sanctions the pursuit of individual happiness as the great end in life. This is not so in matri-

mony, nor in any other natural condition. Happiness is an incident, never an end; and should never be taken account of whenever a principle is to be decided and acted under. As, through love, self is best served in self-forgetfulness ; so, in all affairs of life, happiness is best secured when least thought of, or aimed at.

The law of nature must be also applied to the order and governance of families. Who shall rule the household ? In happy families the question seldom, if ever, arises. Love rules them ; and “love seeketh not her own,” but delights in self-sacrifice. Where the persons of a family are supremely bent upon promoting the good, and comfort, and pleasure of each other, the head will find and keep his own place, and the members will order themselves in all due relation to the head. Nor can any domestic rules be framed to supersede love. The best made code of family order and government would fail, because it would be a code. Human intelligence cannot understand the complexities of ever-varying domestic life sufficiently well to frame a domestic code ; and nature will not give any other than the “Law of Love.” Hence the questions that are sometimes theoretically discussed about the relative fitness of man or woman, or of this man and that woman, to take headship over the household, are all vain.

The order of such households as exist, but are not governed by love, must, however, be provided for, and nature has something to teach respecting them. In general the commanding faculties are given to the man. There are some exceptions, but not enough to change the rule. It follows that the man is the natu-

ral head of the household. It must have a head, because it is a complex organization, in which due internal order, with proper exercise of functions, depend upon subordination of members to the head. While, however, the husband requires obedience from the wife, he is under equal obligation to cherish her. In happy families the obedience and the cherishing are simply reciprocal expressions of love. In all families peace depends upon them, and will be greater or less in proportion to this reciprocity. The parties that will not allow this natural law, but contend—wife against husband for supremacy, or husband against wife for subordination—will surely disturb, perhaps wreck, domestic peace, and leave a heritage of sorrow to children.

## CHAPTER V.

### MARRIAGE A SOCIAL CONTRACT.

Although the man and woman in marriage enter into a mutual contract, and thus come primarily under the jurisdiction of natural law ; yet they constitute thereby a family, and take their position in the social order that environs them. They become amenable therefore to the law of society. Out of society grows government of all kinds. General and local governments, with all their varieties and relations, rest upon society. Civilization and progress depend upon the good order of society ; while their opposites do not at once destroy society. Only hermits and lone savages throw off all social bonds. Even barbarian tribes have some kind of social order, and some kind of families. So intimate is the relation of the family to the social order, that the latter depends upon the former for its very existence, while it becomes more or less exalted and powerful in proportion to the purity and permanence of its families. Hence society having the right of self-preservation, can order and direct families ; while, having also the right to just and high self-evolution, it may rule families so as to promote the public good.

Marriage, therefore, is a civil contract, and civil society may make laws for both its formation and con-

tinuance. However civil society be regarded, whether as an ordinance of God or as a natural evolution of human character and needs, it still has the same course to pursue in respect to families. Its motives and sanctions may differ, but whether regarding itself in authority as divine or only human, every government in support of social order and providing for self-preservation, may, indeed must, place families under its own law. The functions of human government being temporal, its law should provide for the formation and protection of families with reference to temporal consequences. The function should always be in view of government, and nothing incompatible with it should be allowed. Incidentally, both morals and religion may be considered by human government, and promoted by its laws; but, even for these ends, it should never go beyond its temporal mission. Within this scope it may rightfully, and for its own sake should, enact and enforce just and right laws of marriage. While recognizing the mutual contract of marriage under natural law, government must regard it also as a civil contract, and as such place it under civil laws. Natural law binds not only persons, but rulers of the people also. The essential principles of natural law should be followed in all civil codes. Personal duties, under natural law, remain in full binding force over those who are married. Their entrance into social order brings them under government, and subjects them to its laws. In fact, another contract is thereby established. The married owe not only duties to each other, but duties also to the state. They supplement the mutual with the civil contract, or rather, the mutual contract is

evolved by new circumstances into the civil contract. Not only is it the right, but the duty, of government to demand that this, like all civil contracts, be enforced. It should be both clearly defined and impartially enforced, because social order depends upon it.

Monogamy—the life-long marriage of one man with one woman—is necessary for a sound and permanent social order and consequent stability of government. This is evident from the fact that monogamy only produces a family pure and simple. Polygamy—the taking of more than one wife—is not absolutely destructive of social order, because it makes and sustains a kind of family life. It is, however, incompatible with cultured social progress and high civilization, because it takes away the pure simplicity of families. It is impossible to rear children under polygamy, so that they may become patriotic and loyal citizens. They can only be brought up under a form of family life which recognizes selfishness as the law of intercourse. Love, which is the natural law of pure marriage, cannot possibly rule and govern a polygamous household. It may exist in some low and adulterated mixture with selfishness, but never so as to overcome selfishness, nor to stand out against it in any conflict. This partial or incomplete love as it maintains families, though of a low order, makes low social organizations possible, and therefore upholds corresponding governments. The selfish principle, originating in the vitiated family, never leaves the environing social order, and always pervades its governments. Hence polygamy is incompatible with “free governments.” Only tyrannical governments exist over polygamous communities.

Both forms of polygamy evolve tyranny. One very uncommon form exists, but this is so abhorrent to nature that it never has flourished on a large field. It is so destructive to the family, that no community, much less social order, can continue under it. Polyandry—the having more than one husband—not only destroys the very family principle by the horrible “confusion of blood” it produces, but it evolves selfishness so as to exclude love, and thereby makes family life impossible. Not only would free government be destroyed by it, but every government, except the mere rule of the strongest, would inevitably go down under it.

Therefore free governments, under high and progressive civilization, must for their own sakes, for the sake of good public order, and for the conservation of both public peace and prosperity, recognize monogamy only. They should frame laws for the enforcement of monogamy only. They should extend such protection as would promote the permanence of monogamy only. Looking as yet no deeper than the temporal authority and function of governments, it is clear that they may rightfully, and should authoritatively, enact and enforce laws to regulate the formation of monogamous marriage only, to preserve its rights, to promote its duties, to continue it unbroken except by death, and to cultivate that self-sacrificing love which is ever its temporal sustenance and protection.

Still, government only has jurisdiction over the civil contract, but that jurisdiction extends to all the elements of this contract. Prohibited degrees are therefore within the purview of government. It may decree the limit of consanguinity or affinity, beyond

which only marriage shall be lawful. The usual limit of consanguinity is the fourth civil degree—that of first cousins—which is determined by counting to and from the common ancestor. The usual limit of affinity is that of the wife's mother, or daughter, or granddaughter, with their reciprocations. Correlative husband's relations are not under affinity, because the married wife bears her husband's blood, and therefore enters into his relations by consanguinity. Government, in its merely temporal aspect, views marriage under the light of science. It is dangerous to pure love, as well as injurious to progeny, to allow marriage between too near relations. In promoting the very purpose of its own existence, therefore, government may, and should, set forth its table of prohibited degrees.

When marriage has been effected according to law and consummated, then the married parties have claims upon the government under which they live. The civil contract is thus reciprocal. The married give themselves to the support of government, and to the birth and training of children, who will come in their turn under government. The government owes its countenance to marriage, with security for its legitimate exercise, the defence of all its rights, and the enforcement of all its duties. Everything would be easy, if the principle of love actuated all families both at inception and in progress. It does not, however. Therefore evils arise which even temporal government must cognize; but its cognizance is confined to the family limit. It may rightly make and enforce laws for the protection and preservation of the family; but, if it

attempt to break up and reconstruct families, it will break up the stones of its own foundation; while attempts to put them together again would be like those of a builder who might take out and put in new foundations to an old building. The structure of social order might stand some of this violence, but every stone removed would cause peril; while if the lower course were entirely broken in pieces, all above it would surely topple down. Government may not dare to trifle with the family. If its laws allow vitiation of families, they are suicidal laws. Their application would imperil social order, and bring down government into mischief, or at last into ruin.

As a temporal institution, civil government considers first the temporal aspects of marriage. If civil government were only a temporal institution, it would have no right to proceed upon any other than temporal considerations; and, even if it be a "minister of God," it is still a minister for temporal things. While Christian governors will be moved by the Spirit of Christ, and endeavor to conform their public as well as their private life to His precepts, still they have no mission to enact merely religious laws. They have in charge the temporal, and only incidentally and reflectively the eternal, interests of citizens. In respect to marriage their duty is to make and enforce laws upon temporal principles. There will be very little practical difference in the result, for the same law of marriage will be found in Revelation which has thus far been showed to proceed from Nature. The principle of love is the primary warrant of marriage as well as its one effective conservator, as is shown by both Nature

and Revelation. Hence governments that follow Nature, as well as those which acknowledge Christ and maintain His Church, come together at the outset in ordering the marriage relation.

The civil contract of marriage, therefore, which is the special charge of temporal governments, cannot be put under the laws usual to contracts. Individual rights merely are, in other contracts, governed and protected by law ; but in this contract the individuals become so assimilated and conjoined, that they are no longer separate units. They have come together and formed the family, which is that unit of social order on which, as has been amply shown, all stability and progress depend. Human laws, for even temporal ends, must therefore consider the family—first and supremely—in enactments that regulate the civil contract of marriage. Any government that frames marriage laws with sole, or even supreme, reference to individual considerations, will imperil its own existence. Every human government that would live and promote the prosperous temporal fortunes of its people, must recognize the unity and perpetuity of the family pure and simple. As the perfect family is impossible without love, and as love in operation consists of that glad mutual accord which delights in reciprocal self-sacrifice ; therefore marriage laws should disregard selfishness, with the principle of individualism upon which it rests ; while they should all be directed toward the conservation of that mutual personal devotion which pervades, and gives character to, both the mutual and civil contract of marriage.

Divorce breaks up the family. It therefore strikes

a blow at the foundation of all social order. Governments should deal with divorce as a house-dweller may repair the lower layer of his walls. Only the sternest necessity can ever warrant a divorce. Not individuals, but families, are of first consideration ; and this upon the merely natural grounds perceptible to science, and built upon according to human knowledge and judgment. Hence the same rules should direct governments in respect to laws of divorce as in respect to laws of marriage. Both, indeed, must be general ; but both should have the unit of the family in first view, and should give due weight and consideration to the "union of flesh," which is the physical consequence of marriage ; as well as to that reciprocal self-sacrifice which is both the psychical effect and needful support of marriage. Married persons are no longer mere physical individuals. If any human law treats them as such, that human law sets itself against natural law. It cannot change natural law. It cannot restore the original individuality of the parties in respect to each other ; it can only vitiate the family or destroy it ; it can only set itself against the resistless sweep of evolution, or stand out against God's law in both nature and revelation. Christians and "philosophers" stand thus together. Either, upon his own ground, sees divorce in one line of vision. Both condemn it, the one as socially suicidal upon the principle of evolution, and the other not only as suicidal, but as resistance against God.

If enough has been presented upon the general principles involved in the relations of divorce to marriage, it may be in order now to consider their application.

It must at the outset be allowed that human governments do not exist in any ideally perfect communities. Marriages are not, in fact, always kept pure and simple. Individual antagonisms do arise between the married, who instead of living for each other often live for themselves only; even live regardless of each other, or sometimes dwell together in hate. Governments must make and enforce laws adapted to the actual and current condition of married life; while they have the right and power to consider expediency as well as principles in enacting laws. Expediency, however, can never be resorted to in violation of principles. Whatever tares may be suffered to grow in a wheat-field already sown, there is no right in the sower to mingle tares in his seed-wheat. However government may "wink at" incurable evils, it never can rightfully authorize them; it can at most control them and mitigate their extravagancies.

This principle should be the starting-point of all human law touching divorce, viz., 'The family, as the constituent unit of social order, must be first considered, most carefully preserved, and strenuously defended.' Only one thing actually destroys the family. Adultery is its destruction. The faithless husband, while he cannot "confuse the blood" of his own wife, may, however, wound her heart, bring shame and sorrow into her soul, and cause her spirit to mourn. If marriage be psychical and spiritual as well as physical, then the faithless husband committeth adultery against his own wife. The faithless wife, in addition to psychical adultery, committeth also physical adultery; she confuses her husband's blood, she may introduce

into his family a child not his own ; she destroys her own family by the act of unfaithfulness.

Divorce for adultery is plainly just. It is the right of the husband upon every ground, for nothing remains upon which he may continue the marriage relation. The innocent wife, however, remains in her own purity of body, so that by receiving her faithless husband she produces no confusion of blood, although she would remain wronged in soul and spirit. Whether this wrong be tolerable or intolerable can only be determined in specific cases, and then only by the party most wronged. Clearly, therefore, government may rightfully grant divorce from all bonds of marriage, to a man whose wife has committed adultery. It may also grant to him the right to marry again, because he is so separate from his wife that he has a wife no longer.

If divorce be granted to a wife, it must be granted upon another principle. It must be because her soul and spirit are so wronged that her whole person is wronged, while her unviolated body shares in the wrong ; even shares in it to the extent of freeing her from all marriage bonds, and so that she cannot forgive the injury. Human law, if it grants divorce to the wronged wife, must do so upon purely psychical grounds. There are no physical grounds for such grant to a wife against a faithless husband ; or at least none such as the husband has against the faithless wife.

It is mere folly to assert that the man and the woman stand upon the same plane in respect to matrimony. They clearly do not. The man remains man, with masculine functions and their relations always ;

and the woman, woman with feminine functions and their relations only. Human law must duly consider and regard these differences, or else pit itself against the course of evolution and defy God. Governments cannot afford to make divorce laws which ignore the essential differences between man and woman; because "the stream of tendency," "evolution," "becoming," "God,"—or what or whoever rules the universe—is too consistent to allow any order—social or political—to violate first principles by enacting laws that disregard the realities of things.

Positively, therefore, in any stage of civilization, and under any form of social order, the existing government may, indeed should, grant absolute divorce to the man from an adulterous wife. In all stages and forms of civilization, high or low, this law or custom prevails. But divorce to the woman, under any circumstances, has been allowed by law only in high stages of civilization. It may have been permitted in special cases—*e.g.*, where one party wielded great power in church or state—but these cases were marked exceptions. It has been left to the high civilization of modern times to put these exceptions into general laws, by granting absolute divorce to the woman also. The human heart and mind are taken into view by these modern laws, as they never have been before. The physical facts of marriage have been left out of the account, and their sole ground is that wounded feelings alone are enough to warrant the divorce of a wronged wife. Moralists, in forming opinions about these laws, should face all the facts in the case. Legislators, who make such laws, should perceive and

know the real grounds of their enactments. Should it appear that they violate natural law, nothing will stop the natural evils that will result by mere, but inexorable, evolution. It should be gravely considered, upon prudential grounds, whether any community can safely live under a code which confuses the facts and relations of man and woman, and attempts to deal with both in like manner, notwithstanding their essential differences.

If divorce be allowed to the woman upon these merely psychical grounds, feminine impulsiveness will be tempted to exaggerate injuries to feeling. Instead of being encouraged by law to sacrifice feeling, and to subdue righteous indignation, in the interests of the family and for the permanence of public order, this very facility of divorce would have just the opposite influence. Everyone knows that a healed lesion in a still living family, however ugly be the scar it leaves, is better far than a family disrupted and thereby destroyed. In the case of the wronged husband, such healing is no longer possible, for the family is already destroyed. In the case of the wronged wife, however, the family remains undestroyed. In the first case divorce is the merely legal recognition of the destruction. In divorcing the woman, however, the law itself makes the destruction.

All that has been found to bear upon divorce, for the one greatest of matrimonial wrongs, bears with greater force upon any and all lesser wrongs. In respect to all lesser wrongs, both sexes are equal. They are bound physically to each other so long as both shall live. No hurt to the feelings can alter this physical

fact ; and since it is thus unalterable ; attempts to ignore it, or to disregard it by law or otherwise, will only induce a recoil of mischief under natural law.

Now comes up again the question of expediency. Is it not expedient, in the present condition of society, and with the current popular views of matrimony, to relax somewhat the stringency of law ? Would it not check licentiousness, to permit by law persons to be divorced, who otherwise would "become a law unto themselves?" The obvious answer is that persons who break the natural law of marriage, would incur their own guilt, and call down on themselves the natural consequences ; but the government which should legalize this transgression would also invoke those consequences upon itself. The social disorder would result in either case ; but a government, whose laws did not allow the evil, would be in so far innocent ; while a government, whose laws actually forbade the evil and whose executives inflicted appointed penalties, would array itself on the side of natural law, and thereby gain for itself the help of that evolution whose tendency is for good. This all must perceive and accept, whether they regard "evolution" as started and sustained by God, or as self-started and self-sustained. In either case, it would be the power that no man can resist, turn aside, nor escape.

It would be of course impossible in any single treatise to consider all cases, with their peculiarities, which might arise. If we have succeeded in finding and setting forth the principles of natural law in their bearing upon marriage and divorce, the application of those principles must be left to their occasions. Legislators

and those who can influence legislation, should duly estimate and regard these principles in all the enactments they may make or further. Moralists, and indeed mere philanthropists, may not neglect natural law; the first should follow it, for the sake of the right, while the other should follow it for the sake of a large utilitarianism. Even in this temporal sphere, and in view of the right and the best for mortal persons floating along the current of temporal progress, natural law should dominate and guide statute law. For the best good of the greatest number the family should be kept pure and simple.

Sound human philosophy has thus far been referred to and its conclusions pressed. It should operate upon both government and upon public opinion. What laws government may enact in accordance with natural law, should receive the countenance and aid of public opinion. It has been often remarked, and should not now be forgotten, that in the present social condition which environs modern governments, law is effective, not so much by the executive power that stands behind it, as by the public opinion that stands in, under and alongside it. Public opinion is indeed the ruling power in all those modern nations who are in the fore ranks of advancing civilization. All that has been urged, therefore, upon governments, in respect to laws upon marriage and divorce, may be equally urged upon public opinion. Public good is evolved from public virtue. Public opinion should be careful that marriage, on which public virtue rests, should be made, ordered, defended, and preserved upon sure and sound warrant of natural law. It should frown upon

every violation of natural law. It should visit with social ostracism those who violate natural law. Even should governments by enactments violate this law, public opinion should remain true to it, and neither condone nor disregard those violations. It should use its power to reform the laws, and should not approve them because they are laws. It may respect them indeed, while they are laws, to the extent of their legal bearing, but none the less oppose them lawfully, and condemn them openly.

## CHAPTER VI.

### MARRIAGE ACCORDING TO THE REVEALED DIVINE LAW.

Hitherto marriage has been considered in direct reference to natural law. The ground of the main argument thus far has been that natural law is binding upon all men. No other basis has been assumed than that of well-known facts of nature ; while human reason alone has been appealed to in the classification of those facts, and for the theoretical and practical deductions drawn from them. The material facts have been left under physical science, where they belong, in the department of physiology. Deductions from them have been drawn upon solely scientific principles. The facts of thought and feeling, having been sifted of what is peculiar to individuals and reduced to those common to all, have been left to human philosophy, where they belong, in the department of psychology. It has been found, while marriage in its inception is a mutual contract between free persons, and a civil contract in respect to the State ; that, at its consummation it produces a physical unity which makes the parties naturally consanguineous ; and further it has been found, that mutual feelings and thoughts have been so affected by it as to suggest—at

least—that it produces a more than physical, even a psychical union of entire persons.

The marriage duties, therefore, reach to the whole human nature in each person. As the persons are united in body, soul, and spirit; so their every personal organ and faculty is bound by nature one to another in a union whose principle is reciprocal self-sacrifice. The law of the mutual contract, as well as that of the civil contract, rests upon the two elements of the physical and the psychical union. Domestic peace, therefore, demands the recognition of this complete personal union—including body, soul, and spirit—and can only be assured by love, whose natural expression is complete reciprocal self-sacrifice. The very order of society and permanence of bodies politic, since they rest upon the family, require that public law should recognize in marriage that complete personal union which may not be wilfully broken, and whose principle is love. Although marriage under natural law is a double contract, yet it is—be it always remembered—unlike all other contracts, both in its mutual effects and consequent relations, as well as in its civil consequences.

This Natural Law is binding upon all classes in every organized form of society. They may not ignore its principles, nor proceed against its facts. Merely temporal prosperity, progress, and peace depend upon its due observance both in private and public life. Every thinking person, whatever his chosen philosophy, religion, or irreligion, if he accept any general principles whatever, must hold that progress and security depend upon conformity of domestic life to

natural law, with due observance of its facts and principles in civil enactments.

For their own good order and perpetuity, therefore, society and government must deal with marriage and divorce not arbitrarily, not fitfully, not in undue subservience to current and popular ideas ; but according to the evident facts of nature, with right, reasonable deductions therefrom. This will require not only wise, just, and comprehensive laws, but their firm and consistent enforcement. It is particularly dangerous to suffer mere feeling, however earnest and prevalent, to mould legislation or to sway administration. Society and government should adhere to natural law, and never waver.

Natural law is believed by Theists to rest back upon the One God. It is the expression of His will, as shown in the origin and progress of things. Both philosophers—so-called, *i.e.*, the wise of this world—and Theists, agree in their study and application of natural law. Its facts and principles are accepted by both. The former accept them without troubling themselves to seek any sanction for them. The latter seek for Divine sanction. Theists become thereby none the less naturalists. They search into Divine law, with full expectation of finding it in essential accordance with natural law. They only expect further light upon, and added sanction to, already well established facts and principles.

Christian Theists believe that the Divine law is contained in the one revelation recorded in the Bible. They accept what is declared and enjoined therein, touching marriage and divorce, as the law of God.

Hence they claim that public opinion ought, that society for its own protection must, and that all governments, civil or ecclesiastical, should, deal with marriage and divorce according to the Law of God, as it is set forth both in nature and in His Book.

The earliest records of the human race show that the first man had in himself all human characteristics. All men are like him, and he was like all men. "The Lord God said, It is not good that the man should be alone" (Gen. ii. 18). He was placed in a Garden of Delight, he was surrounded with beauty, fed with sweetness, and had all animals passed in review before him. Still he was alone. God, however, did not *create* a companion for him. This would have necessitated a dual origin of the human race. All authentic history points to a single origin of that race. All dealings among men, and all law—domestic, social, national, and international—rest upon this single origin, while all experience confirms the principle. In order to effect this unity of origin, the Lord God took a portion from the side of Adam—whatever that may mean—and "builded a woman and brought her unto the man. And Adam said, This is now bone of my bone, and flesh of my flesh. She shall be called Woman (Isha) because she was taken out of Man (Ish)" (Gen. ii. 21-23). The origin of woman was therefore—with awe and reverence we use the term—by a kind of procession from man. As man was originally created in the image of God, he must have had in himself all the essential elements of that image. The great characteristic of the whole universe—the Kosmos—is its dual constitution. Because it is thus dual, the high-

est among its forms—whether regarded as evolute or created—was originally, is now, and forever must continue, dual. God is mirrored in His creation. The most perfect example of His image not only reflects God, as a mirror does from the surface, but is like God in the source and pervadence of His being. Man is a person, like God. Man contains in himself that dual constitution which is the great characteristic of the Kosmos. This duality, in action, becomes expression and reciprocation. Its highest, as well as most wonderful, manifestation is the masculine and feminine principles. These existed in the first Adam, because they must be in God Himself—how else could they be a universal characteristic in His universe? They must be in God Himself, because they are the means of the manifestation of love, and “God is love.” Nor is this vain and irreverent speculation. It is not irreverent, for we have a right to learn all we can about God, Who reveals Himself in His works: “for the invisible things of Him from the creation of the world are clearly seen, being understood by the things which are made, even His eternal power and Godhead” (Rom. i. 20). It is not vain, for love’s own very vitality, even its very being, manifests itself in reciprocal self-sacrifice. Rising in the lowest forms of known existences, it proceeds through expanding forms until it comes out in “the union” and communion of persons. In them *will*, which is the distinguishing characteristic of person, enters into, and may even control, the reciprocating tendency. Thereby pure love is intensified, and impure love made the most deadly of evils. Perfect love is surely, therefore, in God; and man, created

in God's image, must have in his original constitution the elements of reciprocation, *i.e.*, the masculine and feminine elements. They were constituted in the Adam, formed from the dust of the ground, who was inbreathed with the "spirit of the lives." They were separated into two persons when the woman was "buildest" up from a part taken from the man's side. The purpose of this separation is recorded, "And the Lord God said, it is not good that the man should be alone, I will make him an help-meet for him" (Gen. ii. 18). The separation brought on the possibility of a reunion. It became the potentiality of such a reunion, and plainly was designed for it. This reunion was an advance upon the original form of humanity in Adam-sole. In the sole Adam the masculine and feminine principles were in one person. Love in this first Adam could be only a quiescent principle. Its human expression would be impossible, because there could be no human reciprocation. Now that woman is taken out of man, love springs into activity, and flows and reflows reciprocally : "Therefore shall a man leave his father and his mother and shall cleave unto his wife" (ii. 24). This is the closest of all possible human unions. In this quotation the psychical character of marriage is first and most significantly expressed. The hearts of the two are so conjoined that their new relation supersedes even the dearest and nearest previous relations. But the union reaches to every characteristic and portion of the human personality. The person man and the person woman are by marriage united bodily; "and they shall be one flesh" (*ibid.*); "wherefore they are no more twain but one

flesh" (S. Matt. xix. 6). Marriage was instituted as soon as the creation and essential development of humanity were completed. Humanity, in its fully developed completeness, is therefore male and female. "So God created man in His own image, in the image of God created He him, male and female created He them" (Gen. i. 27).

Two purposes of this creation are revealed; and they correspond exactly with the two purposes as exhibited in nature.

The *first* purpose was that man should not remain alone—*i.e.*, isolated, lonely, with human love's longings within him but no human reciprocation from without, indeed no reciprocation in very kind as his own; but that man should have a "help-meet for him," *i.e.*, a help "as before him;" not only a help adapted to his needs, but such a help outside, over against, distinct from himself; a help who is a person like himself, whose heart and will could respond to himself through all natural channels of intercourse and communion. This first purpose finds exercise on earth; but who shall say that it may not continue so long as the distinction of masculine and feminine continue in humanity? It will not continue in the relation of marriage, for "in the resurrection they neither marry, nor are given in marriage" (S. Matt. xxii. 30). Marriage, however, is not the only relation possible between man and woman. In the regenerate state, where truth and purity rule within and without, where every proclivity is good, and every thought holy, where the whole environment is light and life in God's own presence, it is certainly possible, it is in the highest degree probable,

that human love will find its natural exercise in the never-ceasing reciprocation of man and woman. Surely the joy of heaven, culminating in profoundest, purest, most joyful worship of God, shall not be incompatible with thankful human love. This love must be reciprocal ; while, freed from all evil proclivities and pervaded by purity, man and woman will supplement each other, as citizens of the Kingdom of Heaven, children in the everlasting Holy Family, and the personally beloved of God. "Blessed are the pure in heart, for they shall see God."

The *second* purpose of marriage is altogether temporal. "And God blessed them, and God said unto them, Be fruitful and multiply and replenish the earth, and subdue it." Nature agrees with the Divine revelation, in respect to this second purpose of marriage. Both show that the procreation of children was the earthly object of marriage ; and that a blessing is intended. The birth of children is a blessing to *them*, for it brings them into personal existence. It is a blessing to parents, both as bringing joy to their hearts and as furnishing them with helpers and defenders. This is true, as to the original state of human innocence. Sin has mingled other features with this blessing. It has not indeed utterly destroyed the blessing ; but it has, in some cases, perverted it and even turned it into its opposite. Still the fact remains that marriage produces, and is designed to produce, children as the fruits of one exercise of reciprocal love ; while that love should take them up in its arms, and bless them with itself. In the perfect domestic state, which we do not now experience nor see because of the confusion that is

in the world, the personal unity of the parents, inducing love's reciprocal self-sacrifice, would take children into the embrace of glad love, and thereby expand the joy of marriage by fulfilling its earthly object and design. Though we do not now know this perfect domestic state, we can at least picture it in imagination. What we can thus picture we can aim at. It is conceivable, and therefore an object of hope. It will benefit us to contemplate it even in imagination; for we will be thus disposed to both desire and seek after it. They, who are so disposed, will cultivate the knowledge and practise the precepts of that glad self-sacrifice; which, when perfect in domestic life, is love's own expression, makes marriage holy, and keeps the family joyfully united. This perfect domestic state was the original design of Him, Who created man after His own image; making them male and female, and developing them into parents and children.

We may with profit further imagine the relations which would exist in the conceivably perfect family. Order would of course reign, while subordination would be its rule and law. The ruler of the orderly household would have no occasion to assert himself, because the subordinates would have no desire to invade his prerogatives. Perfect love spontaneously recognizes the need of order. Its own free exercise demands order, while its own satisfaction appears in reciprocation according to order. Husband and wife, father and mother, with the children, would take their relative positions toward each other with a glad spontaneity. Internally, the perfect family would be orderly, without perhaps even thinking about order; while exter-

nally, it would enter into social or public relations through its natural head, without thinking it had a head. Family peace would therefore be not unlike individual health. A healthy person has all his organs in due relations, and uses one or another, or many or all combined, without definite consciousness. His head directs and his heart pulsates, while neither compares itself with the other, much less becomes jealous one of the other.

This perfect domestic state, however, was lost almost at once; before it had reached its natural triune development; before the first child was conceived. Adam and Eve, being created after the image of God, received of course personality from God. As persons they had naturally the chief characteristic of personality. Free will is of the essence of personality, because that alone distinguishes persons—*i.e.*, “differentiates” them—amid all other possible beings or existences. Any being that is without free will is a mere product or instrument of resistless force, and hence, being without choice, is also exempt from responsibility. The highest conceivable type of being is that of person, whose lofty prerogative is freedom of will. This freedom must of course be exercised. To make it and give it no scope would be grim oppression. God gave scope to man's free will, but made its trial the least that was possible. He simply required man to believe in Him, to trust Him, and to follow His guidance. This was necessary both for preserving God's sovereignty, and man's own normal development. The woman and the man chose rather to believe and trust and follow “The Adversary.” Of course confusion

intervened, man was estranged from God, sin entered into the world and all our woe.

Not only individual but domestic life became thus disordered. Confusion touched marriage, and permeated its relations. Passion invaded the domain of love. Bodily passion took up a ruling, instead of its naturally subordinate, position. It opened the door to domestic infelicity. It commenced that awful career which has run down the ages as a flood of impurity, by transposing desire. "Thy desire shall be to thy husband" (Gen. iii. 16). Desire belongs naturally to the masculine side of humanity. The woman is the natural object of desire. When she permits herself to become its subject, she falls from her estate. She loses that purity and delicacy of womanhood which is not only beauty of soul, but strength of both character and position also. While she waits for such expression as commits the man to all the obligations of marriage, she is strong and free. When she originates desire, she puts herself beyond her own control, and man may do his will. When her desire is toward her husband only she may continue pure, but she loses her vantage ground; she becomes subject unto him. "He shall rule over thee" (*Ibid.*). This is the beginning not of domestic order, but of its visibility and sensible pressure. The man before was head of the family, but his rule was naturally acquiesced in by his wife. He was however *felt* as a ruler, when the disorder of sin had transposed desire, and the woman began to think of herself first. Ever since, whenever the question has been raised—"Who shall be head and ruler of the family?"—it has been necessary to decide in favor of

the man. In low civilizations it has been harshly decided in favor of the man, and woman has fallen toward, and sometimes into, slavery. In higher civilizations the domestic headship of the man, though much modified, has never been superseded. It is regarded as neither congruous nor conducive to honor and strength, that any family should be ruled by a female head. Attempts to reverse this natural domestic order have been made, and earnestly advocated, by those who persist in comparing men and women as to equality. The debate and the conflict are destined to be interminable, because man and woman are incomparable in respect to equality. They are naturally supplementary to each other. They are individuals indeed, but not individual units, when they have entered into marriage together. They form thereby the unit of the family and become a common source of its evolution. Whatever exceptions may occur, the man is the strength and force of the coalition; and, even in the exceptions, it is the masculine quality which is that strength and force. Hence the world will probably continue to move in the old lines, and the highest civilization, while it not only exempts wives from slavery but guards also all their rights, cannot reverse nature's order, by superseding or even abating the headship of the husband. Still it should be remembered that this order was no hardship originally, and will never become a hardship where love is the law of family life. It began to be felt when sin disordered the relation of the sexes, and naturally will continue to be felt so long as sin remains. Moreover, the burden of it, in particular cases, will correspond to that

transposition of desire which was one of sin's first consequences. The more the woman values her own pleasure; and, esteeming it first, rather seeks than waits to be sought, the more she will put herself under man, the more become subject to his will, and the more feel his power. The headship of the man in the family is natural and irreversible, but his felt hand as a domestic ruler began with sin, and is intensified by the consequent disorders that grow out of sin.

If we could recall innocence we should become once more, like children, ignorant of evil. We may not, however, recall innocence. It is now only possible to make the best of the irreversible—though, thank God! not irreparable—condition, into which we are plunged by the fall of Adam. We are involved in that condition of the knowledge of good and evil, wherein the best we can do is to choose the good and reject the evil. Manhood, in both its masculine and feminine forms of development, may become enlarged by waging war with sin, in resolutely choosing good and rejecting evil. This is true not only from a religious point of view, but also from the philosophic or worldly wise point of view. The religious man who looks to God, and the philosopher who regards only the evolution of "force," or "tendency," or "becoming," both see that manhood is elevated in proportion to his choice of, and adherence to, good, and degraded and weakened and corrupted by the opposite choice and adherence.

In the relation of the sexes, and in all that depends upon it, the best we can now do is to perceive clearly their natural likeness and difference, and make our

laws with due consideration of the masculine and feminine elements, with fair discrimination between their essential characteristics. The man will remain masculine always, and the woman feminine, so that the same social rules and public laws cannot be adopted, in like manner, to both. It is better for society and government to fall in with the unchangeable order of nature, whether set forth in the Kosmos or revealed in the Word, than to attempt to enforce an impossible equality between man and wife. They should, of course, be equally subject to just judgment, but they cannot be equal in any sense involving their identity of constitution and character. They are two distinct but indivisible parts of one family unit. They are indeed such parts of one evolute human unit of completeness. The harmony of mankind will be restored when the confusions of sin become eliminated ; but the human nature, thus re-perfected, will still manifest itself in the old masculine and feminine forms, which will stand out distinctly even while entering into relations of pure love. This restoration may be hastened by good social customs and wise laws ; but these must, for their own sakes, recognize the ever manifest and persistent differentiations of man and woman.

One might be pardoned for indulging here in an imaginary conception of this restoration. It would be a restoration not of innocence, for that fled forever when the knowledge of good and evil came in. It would be a restoration not of unconscious but of conscious purity. Knowing the evil, regenerated humanity would choose the good. Men and women would choose the good so determinedly that they would not admit even

a thought of evil. Their intercourse would consist with a recognition of their mutual supplementation, yet with such reciprocal looks, words, and acts that perfect purity of body and soul would be evinced. We make some approaches toward this exalted state, in times and places of high civilization ; we make nearer approaches to it wherever the spirit of Christ sanctifies life and directs personal intercourse. Maidens of both sexes may make and cultivate ties of friendship, without thought of overstepping its holy bounds ; while men and women may enter into marriage moved by pure love, which leads them—one by desire and the other in response—to a mutual self-devotion whose joyous expression is reciprocal self-sacrifice. It is well to keep ever before us this high ideal of human purity, for it will promote our efforts to realize it in our own intercourse one with another. It is safe to make and execute laws that would comport with this ideal. Even should cases of hardship arise under such laws, it is better to endure what cannot be cured without violation of principle. Though law and custom should ameliorate evils, yet it is better to sacrifice individuals than to attempt to relieve them by permitting courses that would throw civilization backward, contravene both natural and revealed law, and impede the restoration of that relation between men and women, wherein the masculine and feminine characteristics should have free scope, and yet both keep themselves pure and promote purity in each other.

In actual life, however, while not utterly discarding the ideal, we have chiefly to consider the real. Disorder

still prevails. The disorder of sin disturbs the relations of the human sexes. Be it a natural consequence, or be it a curse of the offended God of love, or be it both ; it is written, not only in The Book but on all tablets of human experience, that one of the high ends and glories of marriage became at once a sorrow and a possible shame ; “ Unto the woman He said, I will greatly multiply thy sorrow and thy conception ; in sorrow thou shalt bring forth children ” (Gen. iii. 16). Every age has witnessed this curse. Our own age is groaning under it. The fury of passion outruns discretion. Children are conceived in sorrow, and brought forth in grievous numbers. Parents often—perhaps commonly—regard them more as burdens than as “ joys and crowns of rejoicing.” Instead of being esteemed as one of the chief ends and objects of marriage, they are rather endured as necessary evils. This of course is wrong, but it is real, and must be accepted as one of the evils of the disorder sin has brought into the world. Its cure is to be hoped for through deep, and as far as possible thankful, submission to nature and the will of God. We must bear the load ; making it light if we can by abstinence, but not by murder. Parents are not permitted to kill their offspring, in order to escape the parental duties of support, education, and care. God’s law is everywhere against it. Every civilized nation forbids and punishes at least post-natal murder. Conscience should keep all Theists from ante-natal murder ; while even the philosophers would teach that it is crime against nature, which nature in some way will surely punish adequately, by the crush and grinding of the cog-wheels of its unpitying progress of evolution.

These are some of the evils incident to the state of marriage, as now existing in this disordered condition of mankind. Other evils also appeared in earliest ages, and continue until now. They flow also from infuriated passion, and work their evils upon men and women, both through faults of their own and through faults of others. Even heredity transmits them across generations, and involves guiltless persons in their consequences. These facts are to be looked at in the face. While they suggest many collateral inquiries, they are now to be viewed only in one aspect. They consist essentially of one wrong, which is a sin under revealed law, and an evil of great magnitude under natural law. That wrong is the perversion of the distinguishing right of marriage; the use of its privilege with rejection of its obligations. This most plainly destroys the family which marriage is designed to up-build. It also ruins the guilty parties, personally, socially, and civilly. Society and government, in self-defence, should resist illicit intercourse with all their powers. God's written law is wholly against it. It is a sin and evil so shocking and so destructive—both privately and publicly—that it should be universally condemned and abhorred. Let it be left in the darkness itself seeks, until that darkness be dispelled by the thunder and lightning of sure—swift or slow—retribution and disclosure.

We have seen that marriage is designed to be both a psychical and physical union. It has two chief objects—*one*, such personal communion that man and woman may dwell together in closest intimacy; and the *other*, the procreation of children. The highest

perfection of marriage is possible between two parties who become one flesh, one soul, and one spirit. They are absolutely faithful to each other. Forsaking all others, they keep themselves for each other so long as both live. They cultivate a glad reciprocity of thought, and feeling, and desire, and will. Their very emotions and tastes respond in sweet accord, however varying in expression. Their spirits come together in unity, or at least harmony, of faith, so that they worship together under one assurance of hope. Their threefold unity in body, soul, and spirit, leaves their personal identity distinct one from the other; yet it is a distinctiveness which deepens, exalts, and purifies their communion, while it gives zest to the conscious delight of all reciprocation.

The extreme opposite to this, within lawful limits, is mere physical marriage. Low as the motive and intention of such marriage is, it comes within both natural and revealed law. Because "it is better to marry than to burn" (1 Cor. vii. 9), therefore, "to avoid fornication, let every man have his own wife, and every woman her own husband" (2). This extreme limit of legal permission is authorized by God, in both nature and revelation. It is not commended, however, either by the experience of mankind, or by the letter of permission. Such unions, though better than "evil living," are not exempt from evils peculiarly their own. The high exaltation possible to man and woman—as made after the image of God, as endowed with noble faculties of heart and mind, and as possessing immortal spirits—is incongruous with a marriage union that satisfies only animal instincts. Still, what-

ever else human creatures be, they are also animals. Even the animal, in human nature, is an essential part of it. Nature, with its best refinements, cannot eliminate the animal ; it can only put it under guidance and control of higher characteristics. Revelation casts no scorn upon the human body. Its salvation is promised. The "spirit-body" of the resurrection, like the "soul-body" of mortality (1 Cor. xv. 44), will doubtless be like Christ's own resurrection-body. It must be material, in order to be capable of material action and reaction amid persons and things of the material universe forever. The dregs of Manichæism remain in both modern philosophy and theology. They often render current opinions turbid. It is very common to regard the human body as evil because it is manifest in matter. This notion, that some substances are in themselves evil, is contrary both to sound philosophy, and to the word of God, which pronounced all things created good.

The animal instincts, viewed either as natural evolutions or as institutions of God, are not in themselves evil, but good. Marriage fulfils one of its important ends in legitimizing and regulating their gratification. They become evil only when they become excessive, or when they invade the domain of the higher faculties. When they enter into the imagination, and dwell there in pictures of desire ; when they come out in speech, making themselves subjects of prurient conversation, or even of unwise discourse ; as well as when they transgress lawful limits, they corrupt character immediately, and are liable to spread corruption. This is true not only of wantons, but even of ascetics. The first are

wicked persons merely; they desire incontinently and seek evil gratifications. The ascetics, in the very practice of their excessive self-immolation, drag the animal instincts out of their low position, and put them habitually into their thoughts. Their reflections stimulate imagination, and turn their passions out like wild animals let loose from their cages. Many ascetics no doubt conquer passion, even when gone wild; but many more, it is to be feared, are torn, perhaps destroyed, by them. If any persons allow their animal instincts to break bounds, they must be prepared to contend against them in their own strength. God, in nature or in grace, will help those who help themselves by striving to keep due relations and subordination among their faculties; but he who carelessly, or wilfully, or presumptuously, admits his animal instincts into his imagination, must fight them alone within the citadel of his soul. Even instruction, also, is not without danger both to instructors and hearers. It may suggest to the latter evils, never before thought of; which when thought of, become temptations. It may inflame the former, by the very associations suggested in teaching. Hence the exceeding importance of devout preparations for such teachings, great watchfulness of self and others in imparting them, and of careful retrospective self-purification amid devotions.

Nevertheless, the animal instincts are natural and good. Marriage should keep our various good functions in due proportions and relations. Any further attempts will leave persons alone to fight against nature, without specific grace from God. Even those who fulfil the very loftiest end of marriage, by dwelling

together in habitual spiritual communion, are none the better even spiritually for dealing with the lower portions of their nature as if they were evil. Their souls may beneficially commune together in thought, taste, and feeling, and their very bodies be joined in natural and holy thankfulness. It is dangerous, and may become mischievous, to attempt to crush out what God by nature has implanted in humanity. Marriage should neither be treated in theory, nor used in practice, with a view to one end alone. It is designed for the delight of the tripartite personal unity of body, soul, and spirit ; as well as for the procreation of children, the maintenance of families, the protection of social order, the support of government, the furtherance of civilization, and the advancement of the Kingdom of God. They only are truly wise, who work with nature ; and who look for the aid of Divine grace, in keeping due order within their own persons, in preserving purity in their active relations, and in both inculcating and practising that moderation which best promotes healthy existence, development, and increase, in view of both time and eternity.

## CHAPTER VII.

### POLYGYNY, POLYANDRY, MONOGAMY.

Marriage in general having been duly considered, the next point brings up its limitations. May marriage be contracted between more than one man and one woman? We have found that marriage is a mortal state; therefore death dissolves it; husband and wife are married only so long as both live. But may a man have more than one wife at a time? The common term describing this kind of union is "polygamy," which means many marriages, or "much married." This term is hardly accurate; and certainly not so specific as "polygyny," which means many women, or rather many wives. Is polygyny lawful? Does nature allow it? Does God's word permit it; and, if so, to what extent?

Nature shows in various ways that it intends marriage to be contracted and kept between one man and one woman exclusively. It shows this in the one practicable law of marriage. That law is Love. Love expresses itself in reciprocal self-sacrifice. It finds its life in losing it. The intimacies and complexities of the married status demand love for the fulfilment of its objects, the promotion of its efficiency, and the preservation of its peace. This love is naturally exclusive between the two parties. It cannot live and

act between more than two. This all experience shows, but there is a good reason for it also ; a reason that is found in the very nature of the love itself. It consists not only in reciprocal self-sacrifice, but in *whole* reciprocal self-sacrifice. It is only to be bounded by the limits of personal capacities, by the condition of environment, and by supreme obligations to the Lord. (Christians mean God ; but the philosophers also acknowledge these obligations to the Supreme, which by tendency or force preserves cosmical consistency.) Within these boundaries love is dual, and each of the two lives for and in each other. Polygyny makes this essential duality impossible, and so destroys the family. It is therefore against nature. Though it is practicable physically, though a man may have more than one wife without causing "confusion of blood"—which polyandry effects—yet, as to all the higher ends of marriage, he becomes wholly incapable of fulfilling them. His many wives, instead of sharing his heart, share his person and fortune merely. He is to them a master, and they to him servants, at least, if not slaves. A high civilization is impossible, wherever the original type of the family is not the custom in domestic life.

When children come into the family life of a loving pair, they are taken up by the love that was the motive cause of their production. They are not, and are not felt to be, aliens. They are partakers of the whole human nature of both parents. Parents and children, in every normal family, are felt to be parts of each other. Dual love expands itself, and becomes three-fold ; not another love, but the same endued with new

and enlarged faculties. The very exclusiveness of true love—always radically dual, because only thus self-sacrificial—reaches out its arms to embrace children, and finds them not a new but enlarged bond of love, as well as multiplied channels for the flow and reflow of the old personal reciprocations. Nothing of this is possible in polygynous households. As true love cannot exist in them, so also the true parental relation cannot grow up in them, while its correlative filial devotion would be quite unknown. Polyandry of course destroys both.

Moreover, psychical union, such as exists between hearts at one, is impossible except in the normal family, where one father and one mother render to each other all due benevolence, actuated by mutual whole self-devotion; and where children grow up in an atmosphere of love, where no law is felt, yet all law is obeyed. This psychical union is itself deepened and purified in all religious persons whose spirits worship the Lord, and whose whole natures—every part in its sphere—respond to spiritual devotion. Thus, the highest development of which human nature is capable not only accords with, but promotes and is promoted by, that simple marriage which joins two in one and takes up children into its unity. In body, soul, and spirit one man and one woman are linked together by normal marriage, and all legitimate products of marriage weave new strands into the one web of their union.

Nature, therefore, sets her seal of approval exclusively upon monogamy. Not only should a woman be bound to one husband so long as he liveth, but a

man should be bound to one wife so long as she lives. This, as a principle, is presented by nature for a guide of life; and all marriages should be pervaded by it, in order that married persons may endeavor to realize ideal marriage. Even if this realization be not reached, it will be, nevertheless, good to aim at it. General laws should never displace, not even lower, this ideal; and public sentiment will best promote public good by holding up always the highest ideal.

History confirms the verdict of nature upon monogamy. Those nations that have practised it, have made the best and surest progress in power and culture. The highest types of civilization, ancient and modern, were found where monogamy was the rule of family life. So long as purity has generally prevailed, high civilization has continued to grow higher; while the fall of empires, with great social disruptions, have always followed on after such corruption as has already virtually destroyed monogamous family life.

Both ancient and modern civilizations have, indeed, subsisted with polygynous family life. This is, therefore, not absolutely destructive of civilization. But as the law of such life can never be true love, nothing remains but the rule of command and obedience. The Orient, from earliest historic times until now, has shown the prevalence of polygyny; but it has also shown only despotism in homes and on all rulers' thrones. The races that have developed western civilization have been monogamous—as a rule—from the first. The "wild barbarian hordes" that overran Europe brought with them the germs of freedom and the seeds of great "progress;" and they brought also

a rough but sound family purity in their custom of monogamy. Governments and social order in Europe are indebted inestimably to the sound family principle that has been acknowledged ; while the one have been strong and the other stable, in proportion to the prevalence of monogamy with the purity which it has sanctioned and largely practised.

Christianity has always insisted upon monogamy, and required its observance as a moral duty. Even when it has gone, under Semitic and other races, among whom polygyny has prevailed, it has never given its sanction to any other view of marriage than as that of the union between one man and one woman, continuing so long as the life of one or the other party lasts.

The semi-barbarian invasions of the Roman Empire in the East were more disastrous to Christianity, than the wholly-barbarian invasions of the West. One cause of this, doubtless, is to be found in the difference between the invading hordes in respect to marriage. The demi-civilization of the East overlaid a rotten domestic and social foundation. It was impossible to build stable governments, or sustain progressive civilization, where polygyny necessarily made tyranny—instead of reciprocally self-sacrificing love—the rule of domestic life. Only despotism in government is possible over a polygamous people. Their first school—home—where the principles of life can alone be inculcated and received, taught them nothing higher than submission ; not the submission of according wills, which springs from the heart and is approved by enlightened judgment ; but that merely slavish sub-

mission to marital power. If any accordance of will was in this kind of submission, it was either because, without it, there would be perpetual domestic discord and social conflict, or because of that inferior kind of affection which may exist between master and mere servant or slave.

Christianity could not make progress in such communities. The liberty, which is part of its vitality—"the liberty wherewith Christ hath made us free"—was incompatible with those unstable forms of political and social orders which were based upon a domestic foundation that overlaid, and therefore crushed out, liberty. The Church of Christ, indeed, has maintained itself in the midst of the long twilight of Oriental semi-barbarism. It has borne its testimony by word and deed continually to monogamy. It has declared it to be the plan of the Creator, confirmed and sanctioned by the Redeemer, and hence morally obligatory upon all. It has held to this position and upheld its dogmas; but it has not succeeded in entering into the kind of demi-civilization that environed the Church in the East. It has only been able to keep its own anchorage on the "Rock," to replenish now and then the lamp out of which has shone, feebly but continuously, that "light of the world" which its mission was to uphold.

The barbarians of the West were capable of higher civilization, because monogamy prevailed among them. Christianity did not found western civilization. It did not even build it up, though it helped to do so. All the causes which have promoted the civic principle in Europe, which have made citizenship possible

and actual, and have thence developed western civilization, have been aided by Christianity, but they originated in monogamy. The Roman Empire, in its prime, inculcated, practised, and even generally enforced monogamy. In its decadence it never, by law or social custom, favored polygamy. While influences and practices opposed to monogamy were prevalent enough in the regions where the feeble grasp of Roman rule was fast relaxing, yet, when that grasp was rudely torn away and superseded by the overrunning barbarians, the monogamy they brought in assimilated with the domestic condition and social order they found. Hence the various peoples fused together, constructed the nations of modern Europe, brought them into one associate civilization, and inaugurated that "progress" which is even yet marching westward. Christianity came into this progress, and gained large power in it during the Middle Ages. It was necessary, at that stage of western progress, not to lay but to strengthen its social and civil foundation.

Stability was the one most pressing need; stability, political, social, and domestic. Therefore Christianity presented in its front, and upheld strenuously, the principle of organization. It threw itself into what threatened to be a chaos of nations, and drew forth a splendid and not unstable order, which has placed Europe in the van of progress. Organization was necessary. The wandering hordes had to settle down in fixed habitations, and to live in reciprocal relations. The Church, headed and led by a succession of able prelates who had the prestige of a seat at Rome—the old seat of empire—entered into the evolving political and social

life of Europe; and in spite of errors and faults, promoted good order, held tyrants in check, compelled lords to recognize the human rights of vassals, inculcated virtue, morality, and devotion, set up her claim as the kingdom of Christ, and infused the leaven of Christianity into all forms of society. All this was possible, because of the fundamental monogamy which underlaid society. Organization was, however, only one of the principles of Christianity. By giving almost exclusive attention to it the Roman Church, which built itself into the foundations of western civilization, and was a most salutary power through the Middle Ages, has suffered herself to become one-sided. Hence she is an anachronism in modern progress. She acts as if she were yet in the Middle Ages. She seems to forget that, besides organic membership in the body politic or ecclesiastic, man has a personal liberty—since he is made in the image of God—which is indefeasible; which may be held in due organic relations, but can never be submerged in those relations, can never escape individual responsibility, never abdicate self-control under the guidance of private conscience, and never lay aside manliness for whatever promise of peace that must be delusive, or of unity which can only be stagnation. Still mediæval Christianity was a glorious and most beneficent power. Its principle is essential to all stability, and is the only foundation of progress. Men must organize socially and politically; while the foundation of all stable order is a prevalent domesticity exclusively monogamous.

The personal liberty, so essential to true manly evolution, must adjust itself to monogamy. The former

is as necessary to the development in man of his original Divine image, as the latter is necessary to his living together with his fellows in needful reciprocation. The difficulty is to adjust personal liberty to the dual unity of the marriage state. The difficulty, as we have already shown, and now again point out, is only adjustable under love, which is a law unto itself. External law—whether it be expressed by common consent, social customs, political statutes, or even ecclesiastical canons—cannot by itself reconcile individual liberty with the bonds of matrimony ; and yet they must be reconciled, if true progress is to continue and Christianity survive. External law may palliate grievances, may give some relief from intolerable evils, may, and indeed should, provide for that part of matrimony which consists in its feature as a contract either personal or civil ; but no law can provide for all its exigencies.

Love alone, self-sacrificing, self-forgetting love ; self, finding its life's joy and comfort in the other self, is the only rule which can perfect matrimony, keep it pure and strong, and so hold it in its place in the foundation of stable social order and organization. External law, whether civil or canonical, cannot regulate love, indeed ; yet it may not dare to disregard it. If "the powers that be" treat it as a mere sentiment, and try to govern with a sole view to outward relations and to individual rights, they will only weaken the cohesion of matrimony, and so break one of the most important of the stones in the social foundation. All statutory laws, civil or ecclesiastical, while not ignoring the contract principles in marriage, will signally

fail if they treat matrimony solely as either a mutual or civil contract. A contract, pure and simple, has in view only individual rights ; and therefore selfishness is its principle. The contract of matrimony does not ignore self at its inception, nor violate personal rights in its normal development ; but it exalts self to the high plane of self-sacrifice, and satisfies self by self-devotion. External law cannot indeed enforce this mutual reciprocation of love ; but if it constructs its statutes and administers them without regard to it, it will simply match its power against the power of nature. Hence, as a rule, law should merely regulate marriages ; while it will best promote good order by regarding marriage, once formed, as ordinarily indissoluble except by death. It will thus induce married persons to make the best of their condition, and so diminish domestic discord with its consequences ; while it will strengthen itself by alliance with that law of nature which stamps indissolubility upon marriage, and shows the way, through love, to make that indissolubility not a burden, but a joy and a joy-giver.

This reciprocal self-sacrifice is not a mere sentiment which might be woven into the code of a conceivable Utopia ; it is a living principle, practicable in various degrees, consistent with enlightened common sense, and confessed to be both authoritative and a power by even humanitarian philosophers. Nature only being appealed to, it becomes clear that love is the only law for matrimony, that it demands monogamy, that the term of the union is the lifetime of either party. Therefore both law and popular opinion will best promote purity and progress, by adhering to this

principle of love, and by aiding its normal use or development.

Though natural law has in this connection been chiefly considered, yet Christianity is in entire accord with it. The Bible, the accepted book of Christianity, the volume containing the revelation of God, is always indeed in accordance with nature and her laws, because revelation flows from the same source whence nature proceeds. This Book, like nature, inculcates monogamy; teaches that love is the law of matrimony—as indeed it is of all practicable modes of living—that marriage, while at inception a free contract, becomes through consummation a life-long union, and is therefore ordinarily indissoluble except by death.

The account in the Bible of the creation of man, and of his subsequent separation into two persons, one a male and the other a female, shows that the original intention was that one man and one woman only should marry together. The births of about an equal number of girls and boys shows that natural provision is made for monogamy only. The words, that accompany the account of the marriage of Adam and Eve, show that love was to be the law of matrimony: “Therefore shall a man leave his father and his mother and shall cleave unto his wife, and they shall be one flesh” (Gen. ii. 4). These words are quoted and emphasized by our Lord Jesus: “He which made at the beginning made them male and female, and said, ‘For this cause shall a man leave father and mother and shall cleave unto his wife, and they twain shall be one flesh. Wherefore they are no more twain, but one flesh’ (S. Matt. xix. 4-6; S. Mark x. 6-8). The prophet Malachi bears his witness

also for monogamy ; stating not only the fact of the creation of one woman for one man, but giving also a reason for it. " And did not He make one ? Yet had He the residue of the Spirit. And wherefore one ? That he might seek a seed of God " (ii. 15). S. Paul bears similar testimony to monogamy, and to love as the rule and law of marriage : " Husbands, love your wives, even as Christ also loved the Church and gave Himself for it. . . So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh ; but nourisheth and cherisheth it even as the Lord the Church. . . For this cause shall a man leave his father and mother and shall be joined unto his wife, and they two shall be one flesh. This is a great mystery " (Eph. v. 25-32).

The Scriptures here assert distinctly that marriage is a mystery. It is such in a natural sense. The union it effects between the man and the woman—making them "one flesh," but also joining them so that they stand in a relation to each other nearer than that of parent and child—is naturally both a physical and psychical union. They are joined in blood, and joined also in a personal intimacy which involves, and should include, the heart's affections ; which makes these affections closer than any other, makes them unique, unlike any other, indeed the only human affections that bind man and woman in complete, exclusive, and entire, reciprocal unity. This natural mystery of marriage fits it for exaltation into the class of supernatural mysteries. We know not positively that S. Paul, in calling it a mystery, meant to put it into that class

which is sacramental. But a sacramental signification was given to the term mystery in very early Christian writings. The Christian church took marriage under its supervision, appointed holy service for its consecration, and gave to it priestly blessing, not only privately, but publicly and openly. Thus it very early received at least a sort of sacramental character, which has continued even to this day; for whatever the Church blesses becomes a means of grace to the faithful, which, rightly used, continues to draw favor and help from the ever-present Head of the Church. Christians continue now, as they have from the first, to seek the authorization of marriage from the Church; and become by the accompanying blessing more solemnly united together, more assured in hope, and much strengthened in grace and power toward the happy and resolute fulfilment of the duty of reciprocal self-sacrifice. Thus the natural mystery is supplemented by the Christian mystery; and both work harmoniously together for good.

The reason given by the prophet Malachi for monogamy is, of course, not the only reason; but it is a most important one, "That he might seek a seed of God." The procreation of children is one of the important ends of matrimony. But mere natural births were not enough to satisfy even this important end. Birth is but the beginning of personal immortal life. There is both a natural birth and a supernatural. Both the generate and the regenerate children need constant nourishment, guidance, instruction, and help. They should become godly; a seed not merely of nature, but a "seed of God." Monogamy alone takes up, into the embrace of its mutual love, the children that are born.

A mother's love and a father's pride may do much for the children of polygamous households. Parents and children, even in such households, may promote in each other "the life of God in the soul," but, if so, it will be in spite of natural domestic hindrances; while, in monogamous households, the normal tendency is toward that love which makes self-sacrifice a domestic atmosphere. The child, living in this atmosphere, would assimilate its principle, and thus tend to grow up into that highest of all modes of life, which offers sacrifice to God continually, worships by feeding upon the sacrifice, and follows after Him Who loving us gave Himself for us.

The written revelation thus sets its seal upon the natural sanction of monogamy. The one shows it to be the natural completeness and perfectness both of the relation between the sexes, and of the consequent parental and filial relations. The other supplements these facts with the assurance of Divine approval, and of the Spirit's blessing.

In Scripture also, as in nature, the man is placed at the head of the family. His headship is asserted, not proved but assumed. The proof rests upon the major premise that order is only possible under a headship. The family requires a head, as truly and as much as the human body. All history, sacred and secular, agrees in assigning family headship to the man. Nature, as we have seen, while it cannot eliminate tyranny from this headship in polygamous households, shows that tyranny is not a necessary consequence of the headship of man. It leaves the headship to him in monogamy, but, by its law of love—the only prac-

ticable law of happy marriage—it leads him to assume headship, and leads wife and children to grant it to him; because either party, filled with the spirit of self-sacrifice, delights to give to the others all the rights, authority, and power that their several stations require. The Old Testament, indeed, seems to impose the "rule" of man over the woman, as a penalty of sin (Gen. iii. 16). S. Paul confirms this, when under inspiration he writes to Timothy, "I suffer not a woman . . . to usurp authority over the man . . . for Adam was first formed, then Eve. And Adam was not deceived, but the woman being deceived, was in the transgression" (1 Tim., ii. 12-14). This imposed rulership, though made necessary by sin, is distinguishable from that headship which is natural. The ruler of the household must maintain his authority, and when necessary enforce it. The natural head of the household should, however, never have occasion to enforce his authority. Both S. Paul and S. Peter assert strongly the man's headship, and inculcate submission by the woman; but they show appreciation of the natural power of love, and of the community of nature and interest between man and wife. "Neither is the man without the woman, nor the woman without the man in the Lord" (1 Cor. xi. 11). "Wives, submit yourselves unto your own husbands, as unto the Lord" (Eph. v. 22), *i.e.*, for thereby ye do God service. "Husbands, love your wives, even as Christ also loved the Church and gave Himself for it" (25), *i.e.*, love them, not as a ruler merely, but with such self-sacrifice as may be for their good and joy. "Likewise, ye wives, be in subjection to your own husbands" (1 S. P. iii. 1).

Other passages in Holy Scripture upon this subject all tend in the same direction. They recognize the hopelessness of attempting to adjust by statutes the marriage relation. Laws could not be written copious enough to cover a modicum of the numerous and complicated difficulties that arise in this relation when disturbed. Especially vain will be the foolish attempts of modern legislation to adjust marriages and provide for their conduct exclusively, or even chiefly, upon the principle of individuality. This principle is indeed both real and important. It must be observed, and can be protected in all contracts that leave the parties personally separate from each other. But marriage, though it be a contract in some respects, is yet more than a contract. Its consummation effects a union which lifts it out of the grade and class of mere contracts. The two parties are no longer entirely separate, as to their personality. Each retains his personality, indeed, and is accountable under it both to God and human authority. Moreover, each personality remains inseparably one, in body, soul, and spirit. Now marriage joins the bodies of the two in the unity of "one flesh," and in all cases knits their souls into some kind of communion. This communion in perfect marriage, becomes a communion of mutual understanding, hearty affections, and according wills; while finally it brings their spirits into such reciprocal intimacy, that their spiritual operations—in faith, devotion, and obedience—are mutually introactive. This demonstrates again the futile vanity of attempting, by law or social consent, to deal with marriage as with other personal and social contracts. Church and state both are com-

elled, by the necessities of the case, to recognize love as the only law of marriage. In all their statutory provisions concerning it, they may not safely ignore this law, much less treat it as a nonentity, or as an impalpable force which law cannot reach. Law can at least recognize it as a necessity, and construct its codes so as to show that reliance is chiefly put upon it, and so as to manifest that without love's self-sacrifice happy, or even comfortable, marriage is impossible.

Nature and Holy Scripture are at one in this regard. Philosophers and Christians should therefore agree. The constitution of human nature, and the word of God, both show self-sacrifice to be the only practicable law of marriage; both show that order in households is necessary, that the husband is the head of the wife, and that children should be obedient to their parents. That would be a wretched family, and that also an unstable social order, or tottering government, or retrograde civilization, which recognized individual independence, rather than subordination in love under indissoluble union, as the normal law of marriage.

## CHAPTER VIII.

### PROHIBITED DEGREES.

In the preceding chapter endeavor was made to define marriage, to set forth the character and extent of the union it effects, and to show the only law of its security and happiness. In doing this it was necessary to keep always in view the "ideal" of perfect marriage. The most thoughtful, among both sound philosophers and true Christians, have a high respect for the "ideal." They do not scorn it as the vicious do. They do not trifle with it as the ignorant do. They do not ignore it, or pass it by with gentle indifference, as wiseacres do. They do not treat it as a myth, as do those hard-headed, cold-hearted persons who delight to call themselves the practical ones who only follow common sense. Truly wise and thoughtful persons esteem "ideals," not only as possible to future attainment, but as present forces working now and tending toward perfection. Hence ideal marriage, whose one law is love, is attainable now in some degree; while the clear, definite, and constant presentation of self-sacrifice, as the one rule of practicable domestic peace and public progress, will tend to enlarge the number and deepen the joy of happy marriages, as well as to strengthen the marriage bond in all cases.

We must, however, view persons and peoples as they are. Much as an ideal perfection is to be esteemed, and advantageous as it may be to hold it up to contemplation, in hope; yet the actual brings individuals, society, and governments all into contact with both ignorance and vice. They also are forces, or at least obstructions, in the environment into which marriage enters. They must be taken into consideration. The first demands instruction, but the latter requires both punishment and control. Hence two practical questions now demand solution :

I. What obstructs marriage, and who therefore may or may not contract it?

II. May divorce be permitted, and if so, for what cause or causes?

The answers to the first question will be first attempted in view of natural law. This law accepts the single origin of the human race. Science, in formulating natural law, has nothing to oppose to the Mosaic account of the origin of the human race. It may, therefore, be regarded as accepting the primary fact of man's creation—or at least evolution—and of woman's procession from man. This original pair married that they might "be fruitful and replenish the earth." They were originally not only distinct, but separate from one another, as to their respective personalities. They united together with reciprocal consent; and while retaining each his own personality, did become in a new way one again in the flesh. They formed a new unity, which resulted in the procreation of children. Their children were both male and female. The latter married. Thus death was successfully

warred against, and the human race became perpetuated on earth in spite of natural mortality. Nature, therefore, did not interpose a barrier originally against the marriage of brother and sister, nor has any such barrier since arisen naturally; for such marriages remain fruitful. Yet, when "men had multiplied upon the earth," nature did show that such marriages were against the high development of the human stock. Natural law set its seal of condemnation, therefore, upon marriage between brother and sister, by the deterioration of offspring. That result appears yet, and extends not only to the body, but to the mind and whole character. Its spiritual effects are also disastrous.

When, in the progress of the race, society was developed, it became of the utmost importance that marriage—which lay at its foundation—should promote, not social deterioration, but advancement. Hence natural, social law demanded that brothers and sisters, indeed all who were near of kin, should not marry together. Moreover, the intimacy in which brothers and sisters, as well as all near of kin, must grow up together from childhood, made it imperative, for the sake of social purity, that marriage between them should be so condemned, that even the idea of its intercourse should be naturally abhorrent. This result has been brought about. Natural law now protects society, at least amid high civilization, against the decay that would proceed from marriage between those who are "near of kin." The good physical and psychological effects are apparent and most effective. Not only is a progeny secured, exempt from one of the most

prolific causes of physical and psychical deterioration ; but a highly educating and refining result springs from that reciprocal intimacy of males and females, which operates freely, yet does not overpass the sexual barrier. The stronger and sterner characteristics of the male and the sweet and beautiful proclivities of the female act and react upon each other, through love that is passionless yet tender, self-sacrificing yet self-defending, and pure in both heart and thought.

Although nature operates thus beneficially, and though natural law, if unobstructed, would produce thus pure families and a sound social order, yet in point of fact those results were not secured. While nations were young, and the struggle for existence, or for early development, kept men all day busy in labor or war, and women busy in tent or house, nature had few obstacles to oppose its good influences ; but when peace brought leisure, and industry created wealth, then luxury "sought out many inventions." Passion, temptation, and opportunity coming together, social purity first fell ; then domestic purity followed in the fall, and rottenness entered into the roots of bodies politic. The rise and fall of the historic nations have kept even step with the condition and course of social and domestic purity or impurity.

Nature, therefore, is not alone strong enough to repress human evil proclivities. It cannot hold prosperous nations within the bounds of good morals. It cannot perpetuate of itself social and domestic purity. Even if it be granted that, through privation and toil, nature could induce a sufficient basis of domestic purity on which to build social order and evolve national

development; yet it could not keep the foundation strong enough to uphold the state, when wealth, luxury, and their consequences supervened. Nature can often show the right, the good, and the true; but she cannot give the power to perform them. Her law is sound, and when fully discovered, is a safe rule. But man is capable of knowing the good, while he chooses the evil. Hence, while the study of the laws of nature leads on toward wisdom, yet obedience to them is opposed by numberless outward temptations, and made very difficult by strong and various proclivities, which, though innocent within due limits, are ever prone to excess. Moreover, nature is not wholly oblivious—judging from the common testimony of mankind—of some unseen Adversary, who allies himself with natural evil in corrupted human hearts, and who both teaches and tempts the thoughtless and the incontinent to run counter to the good laws of nature.

Hence some force was requisite, which, while acting on nature's line, should work with more than natural energy; or at least with a degree of energy which exceeds that usually put forth by nature. It must be granted that "natural selection" is at least conceivable as such a force. If there be such a force in existence, it may rise amid falling nations, and, while it would leave the multitudes going on to destruction, would call out the "fittest," and through their "survival" inaugurate a new renovation and another progressive advancement. This, we say, is conceivable; but it is only possible upon the primary assumption of what is known as "the philosophy of the abstract." That primary assumption is, that the "origin of things" is

not one Personal Being, but rather an impersonal abstraction—called chance, or potentiality, or energy, or force, or tendency, or becoming, or the primary and perpetual self-evolute.

Such an origin and perpetuity of things does not differ in principle from what physical science has named “perpetual motion.” Physical science has rejected perpetual motion for the obvious reason that it was destructive of physical science itself. It upset the scientific principle, that not an antecedent merely, but a *sufficient* cause, must precede every effect.

What physical science, however, rejects, metaphysicians have adopted. The prevalent metaphysical philosophy of the day puts all existence into the car of perpetual motion. An abstraction started it, and an abstraction drives it! Even the latest, highest outcome of “evolution”—personal man, with his wonderful body, his exquisite soul, and his mysterious but most real spirit—is only an evolution from an original impersonal abstraction! In reaching this conclusion the metaphysicians, with lordly scorn, ignore the common sentiment and scientific principle, that every existence can only have in itself what was before in its cause. It may show expansion, development, or evolution of what was inherent in its cause; but no new thing. Hence person could not be evolved by a mere force that has not personality in itself.

Over against this “philosophy of the abstract,” stands the “philosophy of the concrete.” Its fundamental concept is personal being, *i.e.*, One God. It does not prove God. It assumes Him: not merely

His existence but Him ; as the one completeness, or perfectness ; from Whom proceeds the origin and fulness of all things. Before entering into discussion of these opposing philosophies, it is quite competent, indeed necessary, for any person to choose which he will accept as the starting-point of thought, and which he will receive as the basis and authority for moral ideas. Although the philosophers of the abstract give expression to moral ideas, and seem to claim some kind of authority for moral principles ; yet they really have no ground on which to set up a moral system, nor can they define good or evil, much less logically predicate good or evil of any person, or of any word or deed. An abstract self-evolute energy, call it what they will, remains always a blind impersonality, which neither has nor can evoke any sense of good or evil, nor form any basis for a moral throne. The fundamental concept of the philosophy of the concrete, on the contrary, gives an amply broad and strong foundation for morals. Personal Being, One God, has in Himself all power, completeness, and perfectness. He is truth and goodness because "He cannot deny Himself." His truth and goodness form the ground of morals. His creatures owe Him obedience in love, His will is free, yet acts consistently with His essence, which is love ; it acts also with all the resistless force of almighty power. Hence, man can find the good and the true in God, and when His word goeth forth it illumines and vivifies. His Word has made Divine revelations. This was to be expected, from God to His creature man. Those revelations, among other things, touch and illumine morals. Whenever they

are given respecting morals they are infallible, because they are of God.

The primary probability of a revelation from God has long been fulfilled ; and we inherit, from a long line of believers—who were philosophers of the concrete—a historic record of such revelation. It was given by little and little in the course of a historic development of one concrete body, whose mission to bear witness to God is and has been one in all ages, and whose special work for man is and has been one also, viz., to receive, proclaim, and transmit the word or revealed will of the One Almighty, Who is truth and love.

The Divine revelation, amply attested and shown to be authentic and authoritative, is found in the Bible. Whatever it treats of has God's truth for its basis and support. If it treats of that which underlies domestic purity, social order, and national existence, it treats of it with omniscience and by authority. The family underlies these, and marriage makes the family. If the Bible has any record or revelation about marriage, the first is historic, and the second is God's word. We may, therefore, at this point, turn to the Bible in order to search for what God makes known to man in respect to the limitations of marriage. We have already found what it is in itself; but now may ask, 'Who may or may not enter into it?' We have seen what nature makes known in respect to nearness of kin as affecting marriage. We find the Bible treating of the same subject at the same point. It does not, indeed, record anything definite about the early marriages, when one human family ex-

isted alone on the earth. The marriage of Adam and Eve is alone recorded, while nothing is said of their sons and daughters. Indeed, the first law of God upon the impediments to, and limitations of, marriage, is given to an organized society, a visible church, and a fully constituted nation. It applies to similar organizations now. It limits primitive, necessary liberty, by establishing "prohibited degrees." It is in the line with nature, which declares that *now* nearness of kin is a barrier to marriage, and that it is immoral to break down that barrier. Nature shows the mischief that will thus arise; while God's word declares the sin.

We find the first table of prohibited degrees in "the Law as given by Moses." It is not only first, but full. Nothing has been added to it since by God through revelation. Men have added to this list. Even national churches like the English, and provincial churches like the Roman or the Greek, have added to this list. But God Himself has left it, as it was originally given and recorded in Leviticus, xviii. 6-17.

The first of these verses sets forth the principle which underlies and pervades the whole prohibition, and gives the one ground of authority for it.

6. "None of you shall approach to any that is near of kin to him [remainder (*i.e.*, part) of his flesh]; to uncover nakedness: I, the Lord."

The point insisted upon, and sealed with the name of the Lord, is the natural one, viz., that those who are near of kin are partakers together, not of a remotely related flesh, but actually of one flesh, not of similar (*i.e.*, human) flesh merely, but of flesh that is identically one.

This, indeed, is only part of marriage, its physical part; but it is inseparable from all marriage, and is, therefore, the subject of general law. All human persons, in every mortal generation, are subject to it. Its principle is of universal application. Hence, its enactments are binding upon all.

The seal of authority is set to this principle; "I, the Lord." Whoever violates the principle, and takes in marriage "part of his own flesh," sets himself against the Lord; not only defies His authority, but embarks, for himself, his partner, and children if any come, on a course of life where nature worketh against him, and the Lord—the God of Nature—vieweth him with displeasure.

This principle is universal, applicable to all human persons in all times, and amid all varieties of social organizations, because it is stamped by nature on human progress, and set forth by clearest warrant of Divine revelation.

From the 7th to the 11th verses, inclusive, are given instances of prohibition on account of this principle. All cases are not specified, but every specification includes all its actual equivalents. This is obvious and needs no proof. The equivalents must be actual, however, and not merely constructive. They must be real and equal cases of consanguinity, and not of affinity merely. The flesh of the parties must be in the same nearness of kin. If this is strictly adhered to, then we keep within the letter and scope of the written Divine law. Any prohibition, beyond it, can only claim human authority. Neither the Church, nor civil government, nor social consent, have the right to set

up any specifications under "prohibited degrees," which are not set forth in nature and God's word, specifically or by actual equivalent.

7. "The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover: she is thy mother; thou shalt not uncover her nakedness."

This prohibits a man from sexual intercourse with, and hence from marrying, his mother, or a woman her father. The reason is obvious; the parties are in the utmost nearness of kin. This carries prohibition of marriage with grandparents, because they are of one flesh with the parents. The prohibition of marriage includes unmarried intercourse. Indeed, marriage is not specified. The Word of God expressly uses the clearest and plainest terms of prohibition, so as to cover all acts.

8. "The nakedness of thy father's wife shalt thou not uncover: it is thy father's nakedness."

Obviously, the flesh of the father has joined the flesh of the step-mother, and the reason given for the prohibition is that of consanguinity, and not of affinity merely. In ch. xx. 11, the penalty of death is decreed; "both of them shall surely be put to death." This is also forbidden in Deut. xxii. 30, and cursed from Mt. Ebal, xxvii. 20 (see also 1 Cor. v.).

"Intercourse" with a step-father is not equivalent to that with a step-mother. That case, being not one of consanguinity, is here neither mentioned nor implied; it is forbidden, however, in v. 18, for another reason, which will be considered in its place.

9. "The nakedness of thy sister, the daughter of thy father, or daughter of thy mother, born at home;

or born abroad, their nakedness thou shalt not uncover."

This prohibits sexual intercourse between brothers and sisters of both the whole and the half blood. In ch. xx. 17 this is called "a wicked thing;" and the penalty is "they shall be cut off in the sight of their people". . . . "he shall bear his iniquity." Cursed, Deut. xxvii. 22.

10. "The nakedness of thy son's daughter, or of thy daughter's daughter, even their nakedness thou shalt not uncover, for theirs is thine own nakedness."

This specifies what was virtually included in the prohibitions of v. 7. The reason given is the physical fact that the intervening link—the parents—between grandparents and grandchildren being of one flesh with both, intercourse would be in violation of the very closest consanguinity. As this is the same on both sides, the prohibition is equally against intercourse, or marriage, with a grandson.

11. "The nakedness of thy father's wife's daughter, begotten of thy father, she is thy sister, thou shalt not uncover her nakedness."

This, like the same in v. 9, involves both the penalty and the curse.

Here we reach the end of the first class of "prohibited degrees." They rest upon the physical fact of unity of flesh. The parties named are partakers of one flesh, without remove. It is not morally affected by other commingling. The sin is incest, and the penalty is the curse of God.

It will be noticed at this point that physical marriage, including all mere sexual intercourse, is here

mentioned. Nothing is said, or even intimated, of that psychical union between the pair, such as leads "the man to leave father and mother and cleave to his wife;" and which our Saviour seems to recognize in S. Mark, x. 11. It must be remembered, however, that this law was given to a nation of just emancipated slaves. It dealt, therefore, with the most obvious characteristic of marriage. It laid down, however, a moral foundation that can never be removed; or rather it sanctioned, and set the seal of Divine Revelation upon that natural foundation of purity upon which, in all ages, must be built, if built at all, *first*, family integrity, *then* social security, and *finally* national perpetuation. Without leaving this foundation, and without extending it, an advanced civilization may build upon it the facts of psychical union in marriage. As culture becomes deepened and refined, the marriage union will come more and more to light, and be seen as a union between human souls, or even between human spirits, as well as bodies, in this sphere of mortality. Then, while its physical foundation will remain, it will be subordinated: 1, to unity of heart, in loving delight of reciprocal self-sacrifice; 2, to unity of mind, in willing mutual instruction; 3, to unity of taste and desire, either by accord or mutual consideration; 4, and finally, to that spiritual unity which tends to embrace the two parties in one faith and one hope. Thus, and thus only, we reach perfect marriage. It becomes then personal union, in and throughout the completeness of each other's persons. Body, soul, and spirit—the channels in each of personal manifestation—commingle, one with the other, in the communion

of love. Each becomes more intensely conscious of his or her own indefeasible personality, by making it a whole-offering one to the other, and thus, in losing life each one finds it. Such love is a type of God's love, and therefore both heavenly and immortal. Here on earth it is linked, at one part—the mortal body—with death-subjected nature. So long as mortality lasts, the physical basis of marriage will be an inseparable part of every marriage. When "this mortality" shall have run its course, then this physical basis will have fulfilled its design. "In the resurrection they neither marry nor are given in marriage." All the permanent results of marriage must however continue. Psychical and spiritual unions cannot die, because they rest in those functions, perhaps organs, but not constituents, of personality which are naturally undying.

The spiritual side, or department, of marriage finds its natural operation in connection with religion. It is remarkable that the Christian religion alone makes provision for it. The psychical department of marriage is manifest among cultured peoples. Even the unreligious among them have, and act upon, refined and even exalted views of heartfelt, intelligent, and reciprocally self-sacrificial communion. Love, among even the worldly-minded, refines, deepens, and expands the soul.

Yet the physical basis of marriage is inseparable from it in this time of mortality. Morals attach themselves to it. Laws should never ignore it. Marriage laws may not be made for either of its three departments separately. They may not give spiritual or psychical privileges or exemptions, except in strictest

consonance with all the necessary facts of the physical union.

The remaining six verses that treat of prohibited degrees in this xviii. chapter of Leviticus, rest upon other grounds than those of "unity of the flesh." They adhere, however, to the principle of consanguinity, in prohibiting sexual intercourse—and *a fortiori* marriage—between near kinsfolk.

12. "Thou shalt not uncover the nakedness of thy father's sister: she is thy father's near kinswoman."

13. "Thou shalt not uncover the nakedness of thy mother's sister: she is thy mother's near kinswoman."

This prohibition is repeated with a penalty attached in chapter xx. 19. "Thou shalt not uncover the nakedness of thy mother's sister nor of thy father's sister, for he uncovereth his near kin; they shall bear their iniquity."

The prohibition here rests upon nearness of kin. The relationship is that of consanguinity in the *third* degree. (We shall follow, here and through this work, the simplest mode of calculating degrees, by counting to and from the common ancestor: *e.g.*, from a person to father or mother is *one* degree, to grandparent *two* degrees, thence to aunt or uncle *three* degrees.) It forms the link between the first class of prohibited degrees (7 to 11) and those that follow. It is like the first class, as it contains prohibition on account of nearness of kin. The parties are "remainders or parts" of each other's flesh, and yet are the farthest removed mentioned within that relationship.

The penalty, "they shall bear their iniquity," is a natural penalty as well as a statutory one. It is award-

ed by revealed authority, and sealed by natural consequences. The "iniquity" is both physical and psychical. Offspring, if they come, deteriorate, sometimes even to imbecility; while corruption of character at least, with guilt and shame of conscience, supervene. Thus, in both nature and revelation, God stamps with condemnation this incestuous intercourse.

Although father's brother and mother's brother are not, by this verse, forbidden in terms, yet they are included by the reason given. The same kinship exists in either case. Thus marriage and all its rights are forbidden between any persons who come within the third degree of consanguinity.

14. "Thou shalt not uncover the nakedness of thy father's brother, thou shalt not approach to his wife, she is thine aunt" (xx. 20). "And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness; they shall bear their sin; they shall die childless."

This is an apparent extension of the third degree; apparent, but not real when the consummation of marriage is considered. The woman, who before marrying the uncle was no relation, becomes by consummation of marriage partaker of the blood of the uncle, his near kinswoman, part of his flesh. Hence she is, by consanguinity, the very aunt of his nephew. They become actually relatives to each other in the third degree.

Although the uncle's wife (or widow, for his blood remains in her) is thus related to the nephew, it does not follow that the husband of the aunt by blood is "near of kin" to her niece, for he has not received of

the blood of his wife, and therefore is not of one blood with her niece. May a man, therefore, marry a woman and her niece? To this question there is certainly no negative reply upon natural grounds. The parties are not in any degree consanguineous. There may be social and domestic objections to such unions. Their lawfulness may, through family intimacies, lead to jealousies, or even suggest impurity, through that perverse human disposition to tread the very edge of lawfulness with the risk of falling over. But the fact may not be denied, that neither nature nor the written law of God forbids the marriage of a niece with her deceased aunt's husband.

15. "Thou shalt not uncover the nakedness of thy daughter-in-law, she is thy son's wife; thou shalt not uncover her nakedness." "And if a man lie with his daughter-in-law, both of them shall surely be put to death; they have wrought confusion; their blood shall be upon them" (xx. 12); "and another hath lewdly defiled his daughter-in-law" (Ezek. xxii. 11).

Here the relationship is in the first degree. "She is thy son's wife," one with him in possessing his blood, of the same flesh as thyself. The consequence is "confusion;" the very same streams of life are commingled in threefoldness; the sacred duality of marriage is broken. There is no repair for such confusion. It cannot be cured. Society cannot endure it. Hence "both of them shall surely be put to death." This is part of the divinely established penal laws; does it apply in all cases, amid all people, through all time? The Church, of course, is not required to answer this question. Her weapons are not

carnal. Temporal law makers should regard the "confusion" and its consequences. It breaks up grossly, and under inexcusable circumstances, the domestic unity which is in the foundation of all social order and stability. If right be followed and expediency disregarded, then temporal law should so punish this "confusion," that its perpetrators could no longer corrupt public purity. This might be effected by less than the death penalty; nor can it be proved that the penal code which God gave to the Israelites is binding specifically upon all nations, in all time. Expediency, therefore, may be considered. Indeed, Moses himself did not wholly discard expediency (Deut. xxiv. 1-4). And our Lord did not positively condemn it (S. Matt. xix. 8; S. Mark, x. 5). A yielding to expediency does not, however, prevent the natural development of evil. If law does not punish, and cannot check, this or any other "confusion of blood," government must be weakened by it through the social corruption that it will engender.

The Church may, and should, exclude from her communion such offenders. No penitence could be admitted as ground for restoration, except, indeed, such as carried with it security and assurance against the recommitment of the sin; *e.g.*, penitence *in articulo mortis*.

The violation of this law by Judah, on his daughter-in-law Tamar (Gen. xxxviii.), at least suggests that this natural "confusion of blood" does not absolutely vitiate its current; for our Lord's own human descent comes through Phares—the first born of the twin sons of Judah and Tamar (Ruth, iv. 18-22; 1 Chr. ii. 4-12;

S. Matt. i. 3-5; S. Luke, iii. 31-33). This, however, only shows that the remedial providence and grace of God are able to heal even this confusion. On these grounds, therefore, absolution may be granted even to such sinners, if penitent; especially when they surely will not again commit the sin. In fact the Church, in exercising discipline for all sins of the flesh, may safely regard moral considerations alone. While she should prohibit such sins as against both natural and revealed law, and while she should avow and declare their ineradicable corruption and confusion, yet, as their remedial forces are secrets of the God of nature and revelation, she can neither apply those forces nor ignore them. All the Church is authorized to do, therefore, is to forbid them, to condemn those guilty of them; but yet to apply the gracious means of reconciliation to all who are truly penitent.

16. "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness." "And if a man shall take his brother's wife, it is an unclean thing [a separation]; he hath uncovered his brother's nakedness; they shall be childless" (xx. 21).

A specific exception to this law is recorded in Deut. xxv. 5, 6. "If brethren dwell together and one of them die and have no child, the wife of the dead shall not marry without unto a stranger; her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of a husband's brother unto her. And it shall be that the first born that she beareth shall succeed in the name of his dead brother, that his name be not put out in Israel." Herein the God of revelation, Who is God of nature also, makes an ex-

ception to the natural law of consanguinity and to the written divine statute. A husband's brother not only may, but should, take the childless widow, and give her first born the dead brother's name. She may then apparently continue his wife. A specific purpose is stated and given as the object of this duty. The specification excludes all others, and leaves the moral duty intact; it was confined also to the chosen people, and had one object, viz., that a "name be not put out in Israel." When a brother had left children, his widow might not become his brother's wife. For Israelites only the specific exception was made, for all others the whole law stands. S. John Baptist was cast into prison by Herod, for denouncing him according to this law (S. Matt. xiv. 3, 4).

It should be particularly observed, and duly considered, that all the "prohibited degrees"—mentioned and involved as co-equals—*i.e.*, binding on both sides—contained in these eleven verses, are degrees of *consanguinity*; not one case of *affinity* is named. Every fair reasoner must allow that a specified prohibition is equally a prohibition of all its equivalents; *e.g.*, "Thou shalt not marry thy mother" is the same as "Thou shalt not marry thy son." Indeed, a prohibition in any degree of consanguinity, is equally a prohibition of any equivalent degree in any direction. But consanguinity alone is the principle involved. A man may not marry his deceased brother's widow, because she has partaken of his blood, and has thus become by consanguinity the sister of his own brother. She continues, after his death, one blood with him, and therefore is "part of the flesh" with his brother. Nature

utters her voice against such union, and God's written law specifically forbids it.

As the case, however, is plainly one of consanguinity, it does not reach to any case of mere affinity; *e.g.*, a deceased wife's sister is not of one blood with her sister's husband. Her sister did not give him of her blood, it never entered into his vital circulation; hence her blood, which was one indeed with her sister's, is not in him, and her sister is not his sister by consanguinity. This, though a scientific fact—in its department of physiology—becomes the basis of both natural and revealed law in the case. A deceased wife's sister is in no consequent degree of blood-relationship with her dead sister's surviving husband. As far as natural and revealed law reach, there is certainly no prohibition of marriage between a man and his deceased wife's sister. Historic canon law upon this point will be considered hereafter.

Now we come to a prohibition because of *affinity*. The only cases of prohibited degrees of affinity, are contained in v. 17: "Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter or her daughter's daughter, to uncover her nakedness; for they are her near kinswomen: it is wickedness."

Let it be observed that the ground of this prohibition is not that they are her very self, because her very blood is in them; not that they are remainders of her very flesh; but that they are only her "near kinswomen;" close to her, in a common stream of blood, but not actually partakers of that portion of the blood set off to her.

The prohibition is repeated with a penalty, in xx. 14: "And if a man take a wife and her mother it is wickedness ; they shall be burnt with fire, both he and they ; that there be no wickedness among you." "Cursed be he that lieth with his mother-in-law. And all the people shall say, Amen !" (Deut. xxvii. 23).

Here we have a prohibition upon merely moral grounds. Science has nothing to say on this point, because there is no physical violation of natural law. Natural sentiment, and even an intuitive natural sense of right and wrong—*i.e.*, the natural moral sense—may have produced the common judgment of mankind which condemns these marriages. It is certain that they are so condemned, while the impulsive feeling against them is universal, at least in moral and enlightened communities. Even if the natural moral law, and concurrent natural sentiment, were not opposed to sexual intercourse between persons related in those degrees of affinity, it is clearly and specifically forbidden by the revealed law. They are also prohibited always and in all cases, because God's word pronounces them wicked. The penalty of burning, though binding under the Old Dispensation, need not rule now the statutes of existing governments ; but these degrees should be prohibited, with due penalties, by "the powers that be ;" because such powers "are ordained of God." Civil governments, indeed, may not punish this transgression as wickedness ; but they may, and should, do so, as destructive of purity, and so a deadly offence against society, as well as dangerous to public security. The Church should make these degrees of affinity prohibitory by canon, with penalty of excommuni-

cation only to be remitted after “putting away,” with full assurance that the wrong will not—or better, cannot—be again committed. The sufficient ground for this action by the Church is the revealed declaration that “it is wickedness.”

No other prohibitory degrees of affinity are found in Scripture, nor set forth by natural law. They, with their coincidents, should be forbidden by both canon and civil law, but they only. The principle of affinity may not be extended further. Any further extension would violate natural rights, and curtail “the liberty wherewith Christ hath made us free.”

Before drawing out a table of these prohibited degrees, it may be well to finish our review of all that is contained in Scripture, bearing upon the subject. Although Lev. xviii. 6–17 contains every specification, and no more can be found in all Scripture, yet v. 18 treats of a cognate point.

18. “Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her life time.”

It is well known that the words here translated “a wife to her sister,” might, with equal faithfulness to the original Hebrew language, have been translated “one wife to another,” or even “one woman to another.” As this, however, would have been a statutory prohibition of polygyny, which—“for the hardness of their hearts,” probably—was not specifically forbidden to the Israelites; these latter translations are generally rejected. The text of our English Bible stands, therefore, as the best possible rendering of the old Hebrew. In the English it is a literal prohibi-

tion, but given with a reason. It is not an absolute prohibition against "taking" a woman and her sister in each other's life time, unless indeed it would in all cases "vex her." The point is clearly vexation.

Nothing, in this verse, can be used as an argument against the lawfulness of marriage with a deceased wife's sister. An inference, however, is made—with what force everyone must judge for himself—that, as a deceased wife cannot be vexed by the marriage of her former husband to her sister, the point of the prohibition is removed. Moreover, a like inference may be drawn from the words "in her life time," because that limits the prohibition. It is manifest, therefore, that marriage with a deceased wife's sister is not forbidden, either by the natural law of consanguinity, by specific revelation, or by any just inferences from either; nor do the prohibitions on account of affinity include it. It therefore remains a mere question of expediency. It is remanded to the domain of delicate refinement. It may be well to make such marriages socially unpopular, in order that a wholesome intimacy may exist in correlated families; but exceptions in many cases may be well allowed. At any rate it is not wise to extend prohibition beyond the law of nature, and outside the specifications of revelation. The moral sentiment of communities, where this prohibition has long stood in both canon and civil law, has been educated into an abhorrence of it. Hence, in England, opposition is natural; but in countries where this erroneous education has not prevailed, marriage with a deceased wife's sister may be safely left to expediency and to

current rules of delicacy and refinement. The question does not involve morality.

I suggest, therefore, the following

### TABLES OF CONSANGUINITY AND AFFINITY,

WHEREIN WHOSOEVER ARE RELATED ARE FORBIDDEN IN SCRIPTURE AND NATURAL LAW TO MARRY TOGETHER.

#### *Leviticus XVIII.*

A Man may not marry his

1. Grandmother, 6, 7.\*
2. Grandfather's widow, 6-8.\*
3. Wife's grandmother, 17.
4. Mother, 7.
5. Step-mother, 8.
6. Wife's mother, 17.
7. Father's sister, 12.
8. Mother's sister, 13.
9. Father's brother's widow, 14; xx. 20.
10. Mother's brother's widow, 13.\*
11. Wife's father's sister, 12, 17.†
12. Wife's mother's sister, 13, 17.†
13. Daughter, 7.
14. Wife's daughter, 17.
15. Son's widow, 15.
16. Sister, 9.
17. Brother's widow, 16.
18. Son's daughter, 10.
19. Daughter's daughter, 10.
20. Son's son's widow, 10.\*
21. Daughter's son's widow, 10.\*
22. Wife's son's daughter, 17.
23. Wife's daughter's daughter, 17.
24. Brother's daughter, 16.§
25. Sister's daughter, 9.||
26. Brother's son's widow, 16.†
27. Sister's son's widow, 9.\*\*

A Woman may not marry with her

1. Grandfather, 6, 7.\*
2. Grandmother's widower, 6-8.\*
3. Husband's grandfather, 6, 7.\*
4. Father, 7.
5. Step-father, 17.
6. Husband's father, 16.=
7. Father's brother, 14.
8. Mother's brother, 13.\*
9. Husband's father's brother, 14.\*
10. Husband's mother's brother, 14.\*
11. Son, 7.
12. Husband's son, 7, 8.\*
13. Daughter's widower, 17.
14. Brother—half or whole, 9; xx. 17.
15. Husband's brother, 16; xx. 21.
16. Son's son, 10.\*
17. Daughter's son, 10.\*
18. Son's daughter's widower, 17.†
19. Daughter's daughter's widower, 17.†
20. Husband's son's son, 10.\*
21. Husband's daughter's son, 10.\*
22. Brother's son, 14.
23. Sister's son, 14.
24. Husband's brother's son, 16.\*
25. Husband's sister's son, 16.\*

\* Equivalent by consanguinity.

† Equivalent by affinity.

§ Close relationship by consanguinity, i.e., having brother's blood.

|| Close relationship by consanguinity, i.e., having sister's blood.

‡ Consanguinity, i.e., having, through nephew, brother's blood.

\*\* Consanguinity, i.e., having, through nephew, sister's blood.

= One degree nearer by consanguinity.

Marriage, as well as all sexual intercourse, within these prohibited degrees, is forbidden by positive enactments in the Word of God. It is forbidden by natural law also, which of course is unwritten, but is manifested through natural instinct, and evinced by natural evil consequences. Penalties vary with the sin, and consequences vary with the degree of the wrong. Under the revealed law, which carried its penalties through the Mosaic dispensation, death was decreed against both parties in adultery (*Lev. xx. 10*), against those who had sexual intercourse—evidently with or without forms of marriage—within the degrees of consanguinity limited by the relationships of step-mother and daughter-in-law (*11, 12*), and within the degrees of affinity limited by wife's mother or daughter (*14*). In the latter case the penalty was death by burning. Lesser penalties were laid on lesser transgression, *e.g.*, if a man take his sister—half or whole—“they shall be cut off in sight of their people,” “he shall bear his iniquity” (*17*); if he take his aunt, “they shall bear their iniquity” (*19*); if his uncle's wife, “they shall bear their sin, they shall die childless” (*20*); if his brother's wife, “they shall die childless” (*21*).

Equivalents to these specified cases come under the same law, and are subject to the same penalties. Whether these penalties should be inflicted now is a question partly of statesmanship and partly of politics. Statesmen would consider first, whether the state—being ordained of God—is bound to carry out literally and in detail the law of the Mosaic dispensation; and, if not, how far it should be carried out:

while politicians, following Moses' example, would consider expediency, *i.e.*, not only what might be best in itself, but what is practicable. The Church, of course, has nothing to do with these penalties; for her weapons are not carnal. But the penalties do not remove the sin, nor limit the consequences of transgressions, because, though a person may be pardoned, he does not become guiltless, much less pure, by enduring them. The church, therefore, may and should impose her discipline upon all transgressions of this section of the law of God; *first*, by forbidding marriage within these prohibited degrees, and *then*, through refusal of sacraments and others acts of discipline, show her stand in a great moral question, vindicate her authority as "minister of God," and make herself efficient as the instructor, guide, and spiritual ruler of men.

Although these prohibited degrees are also forbidden by natural law, yet interpretations of that law can be less relied on than interpretations of the revealed law; because the former is much more difficult to read. It is nevertheless true that God has set His seal on nature, as truly as on revelation. Hence, doubtless, the instincts common among mankind—and never absent except among degraded peoples, and even there not always absent—by which marriage between near relations is by common consent condemned. Hence also the feelings which admit of the most intimate intercourse of families, without even a thought of evil. Moreover, the heredity of natural law inflicts its own penalties frequently upon those who violate it, by diseases of body and mind in offspring amounting sooner or later even to imbecility, and generally,

by deterioration of species. Those who recognize in natural law only a mere "force" or "tendency," owe to it obedience for the sake of the greatest good of the greatest number. Civil government also not only may, but should, enforce that law for the sake of that greatest good; while it both may and should punish offenders against it, because, by individual corruption, they tend to destroy public purity, and thus weaken the stability of social order, as well as shake the foundations of civic constitutions. Those, moreover, who recognize the authority of the revealed law of God have personal moral obligations which reach to the limits and through all the details of private duty and public responsibility. They should do right and avoid evil, not only for their own sake, and for that of their fellow-men, but also for the conservation of the honor, with the advancement, of the glory of God. They should practise and promote purity for the good of mankind, and the stability of human institutions; while, in gratitude and love to God, they should cultivate the virtue until it rules the "thoughts of the heart."

"The liberty wherewith Christ hath made us free," like all true liberty, includes the right of severest criticism. Even the law of God, whether natural or revealed, comes within that right. There is indeed a "blindness of heart," which makes the mind dark, and prevents clear perception of the truth. This blindness is shown by evident feelings in favor of specific opinions, which induces one to seek arguments for foregone conclusions. That is incompatible with "love of the truth." It awakens prejudice, and destroys

that supreme devotion to the good and the true which searches after them and pursues them be consequences what they may. The law of the prohibited degrees is fairly subject to liberal criticism. Those who accept it should not shrink from severest criticism.

It has been argued that neither natural nor revealed law sets up any prohibited degrees. The common instincts of mankind contradict this, and express that contradiction, whenever occasion arises, with spontaneous and emphatic indignation. Natural law is commonly known, and felt, to establish prohibited degrees ; while marriage within them offends the common natural sense of purity and right. Natural intelligence, also, perceives that, without some prohibited degrees, family life would be destroyed ; and hence that social order would all topple into ruins, while anarchy would prowl and roar through its waste places.

Revealed law sets forth its prohibited degrees, as already shown, in the law given to Moses. It mentions *wife* indeed, where the evident meaning is *widow*. In relation to the other sex the same apparent ambiguity appears. It is well known, however, that the Hebrew language is not used in the Old Testament with the exactness and copiousness of modern legal codes. The same term is used often with different meanings, to be determined by the context. Wife is used both in relation to a living and a dead husband.

Suppose the term "widow" had been used instead of "wife" in Lev. xviii., the table would have been less comprehensive than it is. It would, indeed, have prohibited marriage specifically ; but a captious ob-

jector might then have argued that it did not prohibit illicit intercourse while the husband was living. Wife is a comprehensive term, which, in the ordinary usage of the Hebrew and English, and probably of all languages, varies in meaning with the context. If one required scientific accuracy, he would use the term widow, of a woman whose husband is dead ; but if he wished to cover both the periods of marriage and widowhood, he would use the word wife. The design of Lev. xviii. was to prohibit all sexual intercourse, at all times, between the parties named. This is evident from its use of the very plainest possible language. Hence it took the one term that would be understood as covering both periods.

The argument which insists that the word "wife," in Lev. xviii., means the consort only of a living husband, not only rejects the common usages of language, but strips of all meaning this whole list of prohibitions. At best it would make most of them prohibitions of incest, which would be absurd upon various grounds. In the first place the Ten Commandments, by prohibiting adultery, *a fortiori* prohibits greater sins in the same line. The frequent prohibitions of illicit intercourse, in general, carry condemnation of these specified cases. Specified prohibitions like these, if already covered by a general law, would have weakened rather than confirmed that law. Hence, these prohibitions are either supplemental to the general law of purity, or else such specifications are not obviously contained in that law. In either view they have a standing of their own, as direct commands of God. Moreover, if they are not prohibitions, any man can lawfully marry any

woman—even a father his own daughter—provided only that she has not a husband living, nor he a wife. Such promiscuous marriages, if they should become general, would destroy family unity, and thus cut up civilization by the roots, make Church and State impossible, and remand the human race through barbarism to anarchy.

Moreover, the reason attached to these prohibitions strengthens them; “for in all these the nations are defiled which I cast out before you: and the land is defiled: therefore do I visit the iniquity thereof upon it, and the land itself vomiteth out her inhabitants” (xviii. 24, 25). Is it incest only that could produce this natural result? Was it possible for nations to exist which committed every impurity except incest? If so, then the family is not the basis of society and government. They could exist, flourish, and no land would vomit forth its people, although the very root of all order were rotten, although anarchy should lie waiting in the path of their retrogression. Then morals would have no effect upon social stability; or rather no immorality, except the very worst, could imperil it. Hence this table of prohibited degrees rests upon natural morals, and is binding upon all who accept any principle whatever of order and progress; while, being sanctioned by revelation, it takes place in that chain of moral duty which starts at the unity and consistency of God, and binds all men for time and eternity in both moral and physical sequences of cause and effect.

## CHAPTER IX.

### DIVORCE.

Divorce has been allowed, with more or less willingness of assent, in all ages, among all peoples ; but it has not been generally encouraged, even by popular consent ; while both civil and ecclesiastical law have usually discouraged it. It was perceived by the wise and thoughtful to endanger the very foundation of society ; while the many, who had not this perception, have opposed it by a kind of spontaneous feeling, which in this, as in other matters, shows a force of human instinct on the side of the right. This instinctive feeling, in favor of permanency in the marriage relation, is one of those curious safeguards thrown by nature around society, and is productive of much incidental good toward preserving public purity, by maintaining the integrity and permanence of family relation. Whether this be a merely natural provision for social protection and the support of civil order, or whether it be a direct provision from God to the same ends, it exists nevertheless, and may not safely be disregarded by anyone who recognizes the importance of “law and order.” The veriest sceptic and the most enlightened Christian meet here on one ground. As men, whose own interests with the interests of those

dear to them are bound up in social and civil organizations, they must be thankful for that common sentiment of mankind which instinctively supports the integrity and permanence of marriage, condemns whatever threatens it, abhors the impurity which destroys it especially when it comes near home, and with difficulty condones its disruption even when strong reasons are given. A force is certainly operating among mankind more and more vigorously, as civilization develops, which tends to establish the family upon a sure basis, and to preserve it intact as the one thing that shall not be lightly broken in upon nor thrown down. If this be of God, then it is a beam of "the light which lighteth every man that cometh into the world." If it be only part of that "tendency which upon the whole worketh for good," then it is at least an abstract energy, which becomes on occasions a preservative social force. Philanthropists—whether Christian or worldly-wise—will agree in strengthening and enlarging as they may this common sentiment, and in esteeming it one of the beneficent provisions by which society is sustained and government made possible. It is significant that the opponents, upon principle, of both government and social order, openly assail the family, would remove all its safeguards, and break down all its defences. Anarchy hates purity, indeed hates everything but unlimited individual license. It is a happy thing for social order, with all its superstructure, that not only Christianity and sound philosophy, but the common human instinct—conscience?—stand up for the family, and insist upon permanence in marriage.

Still divorce has been allowed from the early dawn of history, is allowed everywhere now; indeed must be allowed, or worse consequences would be sure to follow. It is true that one great ecclesiastical power formally declares that marriage is indissoluble; yet even that reserves to its head a dispensatory power, and popes have granted divorces. It is true also that some States make all divorce illegal, yet they are few and small, while couples who must be, or will be, divorced merely pass out beyond their borders. Practically, therefore, the principle of divorce is universally allowed. Moreover, nature demands it, and God's Word, in some places permits, and nowhere positively forbids, it. In both nature and His word, God plainly sets forth marriage as a life-long relation, not to be lightly entered into, and never to be broken, except where already dissolved by the one act which, *ipso facto*, destroys the relation itself.

This one act is adultery. That is a sin against God's revealed commandment (vii.). It is a sin against nature, as a violation of natural right, as an invasion of another person's exclusive privilege, as a disruption of human organizations, and as a fatal corruption of public purity. Moreover, it is a personal wrong, which cannot be condoned, because its effect cannot be removed, and for which the wronged person *naturally* demands the vengeance of blood. It is a crime also against society and the state, which government should punish, not only as a wrong to the person whom it should protect, and whose right of vengeance it has assumed; but also because the crime threatens all stability, and, to the extent of its power or influ-

ence, shakes the foundation of social order. If civil government does not punish the crime, it connives its own subversion. The Church should direct her severest discipline against it.

Divorce is effected by adultery. The decree of divorce, whether given by Church or State, is essentially only an ecclesiastical or civil attestation by authority of a fact. The decree carries, indeed, ecclesiastical or civil consequences, imposes censures or punishments, and confers a certain formal deliverance from the marriage bond, with consequent rights; but nature makes a previous divorce. Oneness of flesh, which is produced by natural marriage, ceases to be exclusive and pure at adultery. Adultery will have already wrought such "confusion of blood" that the old marriage rights can no longer be possible, cannot be exercised. The body will have been so defiled that the woman is no longer the same. Her husband cannot take her without the horror of a threefold commingling of blood in living "confusion."

One difficulty, perhaps the greatest, in giving legal and canonical effects to divorce, and in determining it practically, arises from the principle of contract. Marriage certainly is a contract. Consent of parties is of the essence of contract. Formal expression of contract, or such words and acts as are equivalent to that expression, are morally, legally, and canonically binding upon the persons who are parties to it. In its first aspect this contract is mutual. It consists in the consent of two parties, both free; and when made, binds them individually to the full extent of the mutual obligations thus assumed. The limit to the bond can be

overpassed by either party, but the contract becomes broken thereby, and the injured party is set free, with, however, a just claim to damages. This is the simple rule or law of contract, where neither party is affected in the essence of his personal being. Any contract that does not so affect one or other of the parties may be made void for sufficient reason, legally annulled, or even dissolved by mutual consent.

If marriage were only a mutual contract, it would come under the general rule and law of contracts. But the fact is that marriage, when consummated, has produced certain physical consequences which science cognizes, also certain social consequences which are cognized by both government and public opinion, as well as certain moral and spiritual consequences which affect conscience, and subject the parties to the discipline of the Church. It is evident, therefore, that the common law of contracts cannot be applied to marriage. Although it be a mutual contract, by consummation it at once becomes more.

There is great danger that this peculiarity of marriage will be overlooked by public opinion, as well as ignored by those in authority. Indeed, it is already losing its due influence upon individuals, while the minds of rulers, both in church and state, are evidently wavering in respect to it. The cause is the prevalence of what is known as "*individualism*." It is so easy to settle difficulties, both of theory and practice, by looking at only one side of the question! Marriage is a mutual contract between free persons; how easy it would be to view persons as essentially unaffected by marriage; for then the marriage could be broken, and

they would go back—the same as they were—to their original status! No doubt there are already gross violations of the marriage contract, while, in all probability, many more such gross violations will arise. Cases of extreme hardship arise under these violations. It is even possible that all the burdens of matrimony may remain, great personal wrongs, even cruelty inflicted, while the comforts are all destroyed and the rights reduced to a minimum. What shall be done in such cases? Shall the woman be left to the cruel tender mercies of a wicked husband, who has become worse than a brute? Shall the man have no deliverance from a woman who makes his house homeless, and subjects his body to suffering and his soul to woe? It is not necessary to enter into details. Granting the worst, what can be done when cases practically arise? The answer is easy enough, if one-sided individualism only be acted upon. Break the marriage! The contract has been already broken, let the mutual relation cease, remand the parties to their original personal independence!

But this cannot be done. The natural fact of the "one flesh," like all facts, is indestructible. It remains with all its consequences. The parties cannot go back to personal independence of each other. So long as both live their mutual relation remains. Should they meet, that relation would be felt. Should they be widely separated, that mutual relation will be remembered. They are no longer divided like separate individuals. Death only, by removing one party to another sphere, makes the separation complete. Hence the principle of individualism is not broad enough to

cover the case, in its essence and inevitable consequences. If that principle alone be regarded, any laws of marriage founded upon it solely will be in constant conflict with other principles, which nature will vindicate inexorably; while "The Power" behind nature will support her with stern consistency.

Marriage is not only a relation between persons, and so a mutual contract; it is also a relation toward society and the state, and therefore both a social and a civil contract. Society has rights which all married persons are bound to respect. Society rests back upon the family, and marriage only makes the family. Society has the right of self-preservation; and so great is this right, that persons may be, indeed often must be, sacrificed for its preservation. Individualism must subserve socialism, because the latter is paramount. Both are principles; but when they actually conflict, the lesser has evidently transcended its scope, and must yield to the greater. However parties to the mutual contract of marriage suffer, they have no right to escape by breaking up the foundations or even shaking the walls of society. Moreover, government, which is the organism of society, has supreme authority over the social constituents. It must above all things protect, defend, and promote the integrity and consequent permanence of families. It may, and should, to the extent of its power, enforce the mutual contract of marriage; but unfortunately its power in this direction is very limited. It should redress all public wrongs, but many private wrongs it cannot reach. If society and government attempt to redress private wrongs upon the principle of individualism, if they annul marriages

merely to allay personal evils they become simply suicidal; they strike at foundations of their own stability; they "sow the wind."

The applications of these general principles need not now and here be followed out. They belong to the practical work of those who instruct public opinion, and direct its expression, and of those who make or execute civil law. It is enough here to point out and call attention to the principles involved. At the risk of needless repetition, it may be again noted that two principles are involved, both of which are true, but both also relative, and therefore limited. Individualism, or personal freedom, is as truly a human rightful heritage as is socialism, or the existence in free development of society. The former is the lesser principle, its limits allow not infringement on the greater. Society may not only ask, but demand, even through government enforce, individual sacrifices of possessions, comfort, peace, or even life, for the general good, and much more for the preservation of its own existence. There should be no wavering in carrying out these principles. Sympathy for persons who are aggrieved or sorely wronged, however legitimate, indeed praiseworthy, as a private feeling, should not be permitted to influence judges, bias legislators, nor turn aside executive administration. The utmost measure of private injury is a small evil, compared with the steady operation of the principle, that the family must be preserved for the sake of permanent social order. Only when it is impossible to preserve the family should public opinion allow, or the state permit, divorce.

Thus far both nature and revelation are at agreement. The conclusions arrived at commend themselves to social philosophers upon grounds of "natural reason," as well as to the mind and conscience of Christian believers, upon the ground of duty to God, who is Lord of all the kingdoms of the earth.

Marriage, however, reaches beyond the bounds, and is touched by other principles than those of mutual and civil contracts. It is a relation cognized by revelation. From the first it appears therein as closely connected with the whole economy of salvation. It is both germinally set forth, and its full development is treated of in that revelation. In the developed and as yet final revelation of Jesus Christ, perfected by the inspiration of the Holy Ghost, we find nothing indeed to conflict with the mutual and civil contract in marriage, but we find a very marked supplement and addition thereto. The duties of married persons toward each other are enforced with holy sanctions in the Gospel, while their paramount duty and subjection to the state is not diminished; but it is further shown that marriage is a mystery, and like all mysteries, is intended both to promote the glory of God, and to advance the salvation of mankind. Religious rites, indeed, were connected with the ceremony of marriage even among the heathen; but Christianity has attached to its rites of matrimony a peculiar significance with accompanying grace. Although no form for celebrating marriage has been set forth by revelation, and though it cannot, therefore, rank with the two sacraments instituted by Christ, yet, as it is a specific ceremony, instituted by the Church—which is Christ's

Body—for one definite purpose, it calls down a blessing of grace from Him Who promised to be with His church to the end of the world, upon all who, before the altar, enter into matrimony, “not unadvisedly or lightly, but reverently, discreetly, advisedly, soberly, and in the fear of God.” Marriage is thus enacted before God, and the parties go forth into the ordinary walks of life to fulfil all natural duties toward each other, personally, and toward society and the state as a constituted family; but they have come also into a new association which is symbolic of the union between Christ and His church. A deepened solemnity is given to their union with one another, which is not discordant with its natural sweetness; while an exalted glory is added to it which tends to sanctify each to the other, through belief that the Lord has witnessed and blessed their union. Henceforth the natural duty of living, not for self, but for each other—which constitutes the one rule of domestic happiness or peace—is sanctioned and exalted by the Christian duty of making the relation conform to that of the union of Christ with His church.

Thus Christianity throws all the weight of its instruction, cemented by its means of grace, into the scale of social order, by helping to constitute families upon the soundest natural principles, and to preserve them by strongest bands of love and purity. It does more indeed, but it herein shows itself a powerful ally to society and the state, as well as a tender and true promoter of all domestic virtues, with consequent personal good. It furthers also the glory of God; for, in every solemn sanction of matrimony it bears open

witness that "God is love," and that He careth not only for the personal happiness of His creatures, but for the order, stability, and security of society and the state.

In view of these three—distinct, but harmonious, indeed co-operative—aspects of matrimony, the subject of divorce should be considered. How shall divorce be treated, *first*, in reference to the mutual contract; *second*, in respect to the social and civil contract; and *third*, in view of the holy mystery?

I. The principles of the mutual contract in marriage have been sufficiently set forth. Between the parties all the duties of that contract are binding upon the conscience. Having entered into it, they owe to each other all due benevolence, and should perform every necessary act of beneficence. The relation is not only physical, but involves the whole person. Each person owes to the other such self-sacrifice, that they should look—first and constantly—not on their own but on the other's good. They become joined, through marriage, in a physical union which is life-long. They become so united psychically, that they are, in more than a figurative sense, of one heart and one soul.

Yet this mutual contract has been broken, and may in any instance be broken. Adultery breaks it. When a woman is guilty of adultery she dissolves both the physical and the psychical union. She introduces alien blood, destroys the unity of the family, and counteracts the whole end of the mutual marriage contract. She also wounds irrevocably the heart of her husband, destroys his honor, embitters his soul, shatters his hopes, and ruins his peace. If they have children they suffer, in like manner, psychically with the father.

Although the man cannot injure the woman physically, as she can him, yet psychically he can do her equal wrong. Hence the adultery of the woman breaks the marriage, and causes natural divorce, which sets the husband free from "the bonds of marriage." If marriage were a mutual contract only, the wronged husband would have a full right to put away his wife and marry another. But as it is more than a mutual contract, his right of divorce is not peremptory. His private right is limited by his social relations. This point will be considered under the next head. Natural law and the Word of God are at agreement in respect to these marital rights.

The rights of the woman are not the same. The adultery of her husband may cut her to the soul, but it does not corrupt nor confuse her blood. He breaks the psychical bands of their union; but he does not break—simply indeed because he cannot—the physical union of marriage. Even psychically the effects differ, if not in kind, at least in intensity. Naturally the wronged husband feels that only the shed blood both of wife and paramour can repair his wrong; while the woman at most feels a murderous jealousy toward her rival, but does not spontaneously refuse to take back her husband. The moral, or even social, character of these feelings are not now considered. They are mentioned only to show natural impulses, founded upon natural difference in the cited cases, and thus to elucidate natural law. The bearing of higher laws upon these cases will come up under both of the following heads.

The verdict of natural law, therefore, plainly is, that

the wronged husband must separate from his adulterous wife ; or else involve himself in a cumulative confusion of blood, wherein he himself becomes guilty. No doubt this is the natural ground of the English law, which denies divorce to a man who has condoned his wife's unfaithfulness : he has thereby become partaker of her guilt, and no remedy can reach him. These may be "hard lines," but they are the common lines of inexorable nature. Whoever would not be burned must avoid fire. The further verdict of natural law, as plain as the former, is that the wronged wife need not separate from her guilty husband. She may do so because of his cruel, and perhaps irreparable, wrong to her heart and soul ; but, since he has not confused her blood, she violates no physical law in adhering to him.

In respect to lesser violations of the mutual contract of marriage, absolute divorce is no natural remedy. These violations are sometimes terrible—so much so, indeed, as to make living together intolerable. Gross habits, *e.g.*, habitual drunkenness, shocking indecency, madness of ungoverned temper, felonious pursuits, continued virulence in word and act, violent assaults, threatenings against life. But these are individual wrongs ; they do not touch purity of blood, and therefore cannot be repaired by divorce. Nature sanctions separation between the parties for these causes, and imposes penalties upon the wrong-doer ; but only to allay evils. The wronged party cannot perform all the duties of the contract, and is so far exempted ; but the union must remain for life.

Mere humanitarianism sanctions this hard natural

law, because it is the best that is practicable. However individuals may suffer under it, upon the whole it promotes the general good. The revealed law of God allows divorce for adultery only; and accords, in every specification, with the natural differences between the man and the woman. In fact, the Old Testament treats exclusively of physical adultery, while the New does the same in every case but one, and there the possibility of psychical adultery turns upon the translation of the Greek particle *ἐπ'* (S. Mark x. 11). The conclusion, drawn from all sources, is that the wronged husband *should* be divorced, and that the wronged wife *may* be.

II. The marriage contract is not only mutual, but social and civil also. The individual rights under a simple contract are not destroyed, indeed, but merged in the higher contract. Not only the persons but society become involved in the contract, which reaches out to all social organizations—eminently to the state or governmental organization. The state may make marriage laws, while society at large may enact marriage customs. These laws and customs are binding upon both parties in marriage, because, in entering the mutual contract, they have also involved themselves in a social and civil contract. They have in fact made a family, placed themselves in the foundation on which civilization is built, and hence assumed all the responsibilities of their position. They may not now break the marriage contract at will, because they cannot slip out from society, and leave it as they found it. Such a break would weaken the whole social structure, and endanger whatever is built upon or into it. Half the

social mischiefs of allowed divorces, and perhaps all the civil laws that make divorce easy, arise from paying too nearly exclusive regard to the mutuality of the contract. While society should duly consider individual rights and wrongs in the mutual contract of marriage, and while government should make laws that would defend individuals under that contract; both must, for the sake of their own preservation, be careful not to impair the integrity of the family, and especially not to break it up so long as it is not absolutely broken by the one irreparable wrong.

Those who inform and guide public opinion, as well as legislators who make laws, will undoubtedly find it difficult to adjust individual rights within social and civil obligations, in all cases of application for divorce. Still it will be always dangerous, and often fatal, to pay exclusive regard either to the one or the other. This relativity being premised, and its force acknowledged, the practical questions may be faced and determined.

A few of those cases may properly be considered here, as illustrations of the above argument, *e.g.*: In case of desertion, by either wife or husband, both the mutual and social or civil contracts are violated. Shall the innocent party be debarred from the amenities, the comforts, and the advantages of marriage, because of the wilful wrong of the other? May desertion be taken as a sufficient ground of divorce? If the mutual contract only be regarded, the answer would be affirmative; actual and permanent desertion is such a violation of the contract that the innocent party is thereby set free, he or she ought to be divorced with

the right to marry again. But who is to determine which is the innocent party : the deserter may have been driven away ? Hence the general right to be divorced would not cover every case, and should not cover any until the entire innocence of the injured party after full investigation be fully established. A general law, making simple desertion a ground of divorce, would therefore be impracticable, even if the mutuality of the contract were alone regarded.

Does desertion so break up the family that society may allow and government legalize divorce, without shattering a foundation stone of social order ? Not necessarily, because the deserted one may keep the members of the family together and thus maintain the family position in the social order ; there will be a flaw indeed in the foundation stone, but not utter disintegration nor necessary displacement.

The relation of two separated parties, if viewed only physically, becomes like the relation of the living to the dead ; there would not be confusion of blood in case of another marriage, at least none which physiology, as at present known, can detect. Psychically, however, desertion cannot be so complete as to utterly destroy the mutual contract of marriage, much less the social or civil contract. The parties, if they never see each other, cannot escape the knowledge that somewhere one exists who is part of the other ; while, if they meet, it will be with the consciousness that the barriers between them have been broken down. Such personal, social, and civil disasters are liable to follow after desertion, that the moral sense of society is against allowing divorce for desertion, while the gov-

ernment that allows it runs the risk of a suicidal act.

Are intemperance, or disgusting grossness, or absolute neglect, or evil temper, habitually manifest in vile words or cruel acts, or dangerous violence, sufficient grounds for divorce? Yes, if marriage be only a mutual contract, between merely independent parties who could return to their independence; but rather, No! because the personal unity consummated by marriage is not destroyed by these causes; nor is the family demolished. The common social sentiment sanctions separation in such cases; and government may legally grant it, with wise safeguards and compensations to the injured party, as well as penalties against the wrong-doer. Divorce, however, for such causes would imperil the social fabric, as well as involve risks to private and public purity.

Does conviction of felony break the bond of marriage? It would no doubt be very hard for an innocent, pure-minded, and even religious, man or woman to be bound in marriage, through life, perhaps a long life, to one who is in prison and liable to remain there either continuously or by renewed committals. The felony, being wilful, becomes in effect a voluntary breaking of the mutual marriage contract. The other party, so far as the binding force of such contract alone extends, is set free. Both, however, still remain in living oneness of flesh. Death only can dissolve that. There would, however, not be—as far as physiology can now show—in another marriage with another party, any “confusion of blood.” In respect to the civil contract the felon has not only forfeited his right to civil

privileges, but by his crime has rendered himself incapable of maintaining his family, and of keeping it in due order as a social constituent. Society and the state have a fundamental right which he has violated. It is for their interests, to remove from their own foundation the family which he has desecrated and, as far as he could, destroyed. Hence society may respect and government authorize divorce, with privilege of remarriage, to a felon's consort. These conclusions are arrived at under natural law.

Under the revealed Law of God felony is not mentioned in connection with marriage. The right of human government to punish felony is however distinctly affirmed, indeed Divinely granted, in express terms of revelation. Government, as a Divine institution, should therefore regard something higher than natural law. Its statutes—whether penal or beneficent—should conform to revealed law.

In the Old Testament great liberty of divorce was granted, but not to both parties. The man might put away his wife, by merely giving her a writing of divorcement (*Deut. xxiv. 1*). The woman, however, received no such privilege. She even could not return to her former husband, if the next died or divorced her (4). This Mosaic legal privilege was, however, against the natural law of marriage, which was instituted at the beginning. Our Lord says (*S. Matt. xix. 8*) “Moses because of the hardness of your hearts suffered you to put away your wives; but from the beginning it was not so.”

[It may be observed here, in passing, that Moses, as a divinely authorized legislator, did permit divorce;

he did it under pressure, indeed, and expediency was his evident motive. The principle of expediency was therefore recognized in the Jewish Theocracy. This opens the question—‘ May human governments now act upon expediency ; may they grant privileges, which are not strictly right or best, in order to avoid greater wrong or injury liable to arise from denying them ? ’— It is not easy to answer this question. If it be answered affirmatively, then human governments may grant divorces for felony, desertion, intemperance, cruelty, or even for irreconcilable incompatibility of temper ; because it seems inexpedient to keep within the marriage bond such persons as have become hopelessly estranged. Indeed, if expediency be accepted as a principle of government, there could hardly any limit at all be set to divorces. They who claim that government has the right to act upon this principle must rely chiefly upon natural reason for support ; for it would hardly be claimed that what Moses allowed to the Israelites might with equal liberty be allowed to modern nations, relatively so much further advanced in civilization and enlightenment. Moreover, the Israelites were not exempted from the personal and social evils of free divorce ; nor would any modern people escape them. If society should recognize and government authorize free divorce, it would undoubtedly find very inexpedient results. In attempting to relieve specific cases of hardship, it would shatter the very family principle itself ; and thus break up the social foundation.]

Returning now to the regular course of our investigation, we find only one point remaining, and that point

is divorce for adultery. We have seen, under natural law, how adultery destroys the family. That makes sufficient reason why society, under the instinct of self-preservation, sanctions divorce for this cause; and why government, under the same instinct, authorizes it. Under the revealed law it is expressly authorized. The highest expression of that law is found in the words of our Lord Jesus Christ. They are recorded by the first three of the Evangelists, while the same law is enunciated by S. Paul. The New Testament, therefore, recognizes the fact that adultery is a sufficient ground of divorce. Hence society and human government have the sanction of our Lord and of the Holy Ghost, for countenancing and authorizing divorce on account of adultery. The passages themselves will be reviewed separately under our next general division of this part of our subject.

### III. In view of the holy mystery of marriage, how shall divorce be regarded and treated?

With a sense of relief we turn now to a point where natural law presents at the most analogies, but exerts no definite authority. The mysteries of the Gospel are illustrated often by natural analogies, but they have in themselves a divine essence, with functions that are made known by revelation. The mysteries of the Gospel are not hidden things, but rather deep things of God. They are not merely to be wondered at, for then we would be tempted to banish them from the region of the practical. They have always a practical root, and though this sends shoots upward into lofty human interests, even heavenward, where those interests will flower and bear fruit forever; yet the

practical still retains its connection with earth and time, and consequently with duties, hopes, and blessings of the passing day.

The mutual and social or civil contracts in marriage come first under the purview of natural law, and have been sufficiently so regarded. Though natural law is believed by all Theists to proceed from God, yet we have no other sources of discovery respecting it than the instincts, reason, and moral judgments of mankind. These are distinct, and full enough for the uses we have made of natural law, in respect to the contracts of marriage. All that is true in principle and legitimate in deduction, stands upon the authority of natural law; so that, so far as it goes, the conclusions we have fairly reached respecting marriage and divorce, may be regarded by Theists as divinely sanctioned, and by philosophers of the abstract as at least accordant with the forces of evolution.

Now, however, we come out upon distinctively Theistic and Christian ground. The Theist is not always Christian, and does not always accept the literal and the clearer meaning of revelation. He claims the right to push his philosophic investigations into the grounds of revelations, and claims further the right to reason upon those grounds. This course is called speculative, and is not in much favor among Christians. It is thought to militate against that reverence and godly fear, so helpful always and needful often, in "searching out the deep things of God." But we cannot suppress the speculative mood, if we would. In this age especially it will not submit to either enslavement or extinction. It will be prudent, therefore, and perhaps

wise, to allow it to use all its powers within the scope of possibility.

The speculative Theist asks if there is any antitype of marriage in the Being of God Himself. He looks with the naturalist, downward and outward through the sensible universe, and finds everywhere types of marriage. Inorganic chemistry is full of them, vegetable life exhibits them, animal life almost copies them. Everything is at least dual. Two distinct elements stand everywhere; first apart waiting for each other, and then rushing together with mutual self-sacrifice. This self-sacrifice is nowhere a loss, but a mutual gain. Each is most effectively self-satisfactory in losing self. All that is in the effect must be in the cause, hence the speculative Theist seeks for something in God corresponding to this universal mutuality. Further, this universal reciprocal action and reaction is productive, and the product clings to the reciprocity. Is there, then, in the Divine Being a mode of existence which accords with this threefoldness throughout the natural universe? The Theist may be suffered to pursue this line of speculation. It need not harm him, nor others, if they only are and continue pure in heart.

Christianity accepts the Word of Revelation. It found in it at first, and has ever since preached, the fact of the Trinity. Many have doubted this fact. It has been assailed in every direction, but always with the result of clearing definitions, and extending knowledge. It stands out now in definite form, and describes the mode of Divine Being as that of three persons in one God. The interior economy of this mode of being

is not described, nor can it be searched into with any expectation of full discovery. But one person is declared to be the Father, another His Only Begotten Son, and a third the Holy Ghost, "The Spirit of truth which proceedeth from the Father" (S. John xv. 26). The concordance of this with the human family is startling in its completeness and its particulars. The types in the universe find here their antitype. We may not search further with any expectation of learning more. Mankind being in confusion, as all allow, sinful, weak, and presumptuous, as Christianity teaches, is not able to find out more of God than is revealed. The beatitude—"Blessed are the pure in heart, for they shall see God"—suggests, if not actually promises, that some shall, sometime, somewhere, be able to look within the veiled circle of the Divine Being, and behold the reciprocal communion of the Persons in that Eternal Family.

It is thus clearly set forth, in the doctrine of the Trinity, that, from the very first, the complete unit of being was not the individual person merely, but persons united in a family. Thus Christianity discovers a Divine seal set to the natural fact, that not individuals but families constitute the complete units of humanity; and hence that the family is the original basis of all order, as well as the bond of social organism and the energy of its development. This descent of families, not only strengthens the hands of those who would maintain them at all cost, but presents both solemn and exalting thoughts to all who are glad to find new points of human godlikeness. If the human family could be stripped, both in idea and fact, from

everything gross and low, the contemplation of it, as a type of the Divine family, would stimulate pure and devout imaginations toward sweeter trust and closer communion with God; it would also throw a peculiar sacredness around the marriage of mortals, and impress us with a wholesome sense of its high analogy as a bright though solemn mystery.

The descending Christ, sent forth by the Father in love for the world, prepares at once a "Bride" for Himself. His first miracle was performed at a marriage feast. The beginning and end of His work is, that "The Father of Glory" "gave Him to be head over all things to the Church" (Eph. i. 22); "Christ is the head of the Church; and He is the Saviour of the Body" (22). "Christ also loved the Church and gave Himself for it; that He might sanctify and cleanse it with the washing of water by the word, that He might present it to Himself a glorious Church, not having spot or wrinkle or any such thing; but that it should be holy and without blemish" (25-27).

Let marriage and the family be purified from every gross association; be lifted by pure minds and consciences into its due relation to the Triune Being, and be regarded in its analogies with Christ and His Church; for only thus can a due conception of its glory and its purity be conceived! Looking also in the other direction—*i.e.*, out toward and down into the Kosmos of matter and force—we find marriage at the head of that wonderful system of reciprocal action and resulting composite perfectness, which extends up to it from the lowest inorganic affinity through all the activities of nature.

Yet this sacred relation may be violated and corrupted. In this, as in all matters temporal, we are compelled to face a flood of darkness. This relation of marriage, so beneficent in its origin, so evidently designed to promote that sweet refining virtue of purity, so associated with profoundest knowledge of the mode of the Divine Being, so exalted by analogy to the union of Christ and His Church, so interwoven with the whole fabric of material development or evolution, such a boon from the Creator, Who saw that all His work was good, such a manifestation of the fact that no thing existing is essentially evil, such a chain linking our lowest natural proclivities with our highest spiritual aspirations ; this relation of marriage may be violated. The family, which it constructs, may be shattered and broken. It is not exempt from the invasion of sin. Man may make this intended good and glory into a wretchedness and a shame. No wonder that in doing so he sets himself against all nature's harmonies, strikes at the root of all good order and progress, and opposes himself to the purity and holiness of God ! Sin against the family drops the sinner off the loftiest known height of human exaltation ; no wonder that he falls far ; no wonder that this guiltiness is most corrupting to the persons who commit it, and most destructive to the "common good ;" no wonder that it produces naturally that "blindness of heart," which lifts a pall of darkness before "The Light of the World," so that the corrupted ones cannot see Him, but are left to walk evermore in their chosen darkness toward the end, bitter as wormwood and sharp as a two-edged sword.

Still this sin and evil are both positive and actual. They do not call down the immediate vengeance of nature. They are not visited at once with the final Divine judgment. The acts are done, even persisted in, and the guilty live. Society, though stricken at its foundation, still remains; while its organizations perform somehow their functions. The Church, as a form of social organization, has to deal with this actual wickedness whenever it comes within the circuit of her power or influence. Only one wrong actually destroys the family. Others defeat some of its ends. Others make its harmonious existence and progress impracticable, perhaps sometimes impossible. But only adultery breaks in pieces the family, and leaves it a ruin upon earth.

Divorce is the only deliverance from family ruin. It does not make that ruin; it only recognizes it, and provides the one deliverance possible. It cannot deliver the guilty. They must "bear their iniquity," so far at least as to continue while they live in the forfeit of all family rights and privileges. What they have destroyed, they cannot again build up. Personally, indeed, penitents may hope to be forgiven; but the deed of their sin remains with all its consequences through at least mortal life. The innocent parties, however, who have suffered wrong, escape the immorality, and should of course be delivered as far as possible from the consequences. They cannot, indeed, help suffering in both feeling and outward condition; but this suffering should be palliated, as far as possible, by both civil law and social "brotherly kindness;" nor should the Church fail in benevolence for the innocent sufferers.

But "what is written in the Law?" The word spoken by Christ is the law of Christianity. The Church has no other code. Now, Christ has confirmed both the law of nature and the primary law of the Old Testament. He has taken away the liberty wrung from Moses by the hardness of the hearts of the old Israelites, and brought back marriage to its original and natural permanency and exclusiveness. He sets it forth as a union for mortal life between one man and one woman; and declares that "adultery" only can break it. He made this declaration in a region and period of great social corruption, and of much looseness of popular opinion upon the subject of marriage. He made it also with all the future in view, with all the fortunes and varying associations of His Church before Him. He made it for her instruction in all time. He set His seal to the natural fact that adultery destroys marriage, and declared it to be the one only ground of divorce. His words follow, 'as recorded by the first three of the Evangelists. In the first place He locates this sin, where all sin arises, in the heart, *i.e.*, in corrupt imagination, in illegitimate desire, and in the perverted will. The act may fail, for want of co-operation or opportunity, but he who indulges—not he who may be tempted and yet resists—the inordinate desire, sins in the deep of his person and character. "I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart" (S. Matt. v. 28). He gives only one rule for those who are tempted. They must resist promptly, without parleying, at any cost; though it be like plucking out the "right eye," or cutting off the "right hand."

Having thus guarded the approach to this sin, indeed shown that the approach is the point of greatest danger, He afterward gives the Law for the act. "Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery" (v. 32). "Whosoever shall put away his wife except it be for fornication and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery" (xix. 9). "Whosoever shall put away his wife, and marry another, committeth adultery against her (*ἐπ' αὐτήν*). "And if a woman shall put away her husband and be married to another, she committeth adultery" (S. Mark x. 11, 12). "Whosoever putteth away his wife and marrieth another, committeth adultery: and whosoever marrieth her that is put away from her husband, committeth adultery" (S. Luke xvi. 18).

The first of the above passages is from the Sermon on the Mount. The last three are records, by the three Evangelists, of the same saying. It appears to have been made first openly before the Pharisees who questioned, with the intention of tempting Him; and then to have been repeated privately to His inquiring disciples. "His disciples (in the house, S. Mark x. 10) say unto Him, 'If the case of the man be so with his wife it is not good to marry.' But He said unto them, 'All men cannot receive this saying, save they to whom it is given'" (S. Matt. xix. 10, 11). What saying? Evidently not the saying about divorce, for that belonged to the law of God in both nature and revelation. "For verily I say unto you that one jot

or one tittle shall in no wise pass from the law till all be fulfilled" (S. Matt. v. 18; S. Luke xvi. 17). The saying referred to was that of the disciples, "It is not good to marry," as is shown by the following v. 12, and by S. Paul, in 1 Cor. vii. 9. To some persons the power is given, and they, "for the kingdom of heaven's sake," may deny themselves marriage, in order that they may, without distraction, give themselves wholly to the work of the service of the Lord. Jesus, however, laid down no law, not even a general rule, of celibacy. He recognized its exceptional character, and did not withhold His approval of those using this grace "to whom it was given." All experience shows that a law of celibacy is disastrous, both to purity of mind and cleanness of life, while a rule of celibacy is too often only a mischievous temptation.

The way is now clear and open for the study of the one law of divorce set forth by Jesus. One cause only is given. It is the one cause which naturally destroys marriage physically, by confusion of blood. It is the one cause that takes away the very ground of the mutual contract, and makes its continuance, physically as well as psychically, impossible. It is the one cause which destroys the social or civil contract, because it ruins the family, on which society and government are based. It is the one cause which violates the gracious mystery of marriage, because it invades a right which is exclusive, and commits sacrilege against that which is sacred. That cause is adultery. St. Matthew, indeed, uses not only that word, but "fornication" also. Although the primary meaning of the latter expresses the act of impurity between unmarried persons, yet

that is by no means its exclusive meaning. In fact, it is simply the generic word which covers all cases, while the former touches only the marriage relation. Both describe one act. The first covers the act in all relations; while the latter includes the act, though the relations are most prominently in view. They may be treated, therefore, in this case, as words of equal import. They should, however, be carefully and critically examined, in order that their exact meaning be discovered, so that the Christian law of divorce may be distinctly set forth. It is imperative, for this end, that the bearing of the law should be considered, first upon the husband and then upon the wife. The two cannot be treated together, because of the physical difference between them. Psychically, as we have seen, they are very nearly—though even therein not quite—alike; yet nearly enough alike, perhaps, to require the same treatment, in view of concurrent if not positively coequal rights. At any rate, it will be well to see clearly whether Jesus deals with marriage on its psychical side, and if He makes both parties equal in respect to divorce.

*First.* The husband may divorce an adulterous wife. This is clear on every side. Does our Lord say anything about a subsequent marriage? Not specifically, but the right follows from the very divorce itself. Divorce is a veritable and complete dissolution of marriage. It breaks up the mutual as well as the social and civil contract. Even the sacred mystery of marriage is profaned by it, and thereby ceases as a holy contract. The guilty party must bear his or her iniquity. He or she derives no right of remarriage by divorce, be-

cause it would be monstrous to allow such right to one whose own guilt broke the marriage bond. It is, moreover, a principle of common law, as well as of common sense, that no person may avail himself of consequences of his own transgression. If this be true, and a just divorce does actually destroy marriage, then the man no longer has a wife nor the woman a husband. In that case the general rule set forth by S. Paul (Rom. vii. 2; 1 Cor. vii. 39, "The woman that hath a husband is bound by the law to her husband so long as he liveth") does not touch the point. It declares merely the fact that marriage is ordinarily a life-long union. It does not contemplate, and therefore does not cover, the case of its violent and guilty disruption.

The law of Christ, as given in all the three Evangelists, is definite and express: The man may divorce an unfaithful wife; and she may not marry again. He is free, because guiltless. She is guilty, and therefore incapacitated from marrying again. Nor can she go back to her wronged husband, because she cannot go back as she was before; she cannot go back without carrying her confused blood, and thereby promoting and perpetuating a further and complicated confusion. This is a natural fact. The Old Testament refers to it, Deut. xxiv. 4, "Her former husband, which sent her away, may not take her again to be his wife after that she is defiled; for that is abomination before the Lord;" also Jer. iii. 1. Such a sin pollutes the land. Therefore it is against the natural law of God. It is forbidden not only absolutely, but with a stated reason: "that is abomination before the Lord," "shall not that land be greatly polluted!" The guilt of

adultery therefore is horrible, in its effect upon the persons of the transgressors ; and terrible, in all its near and remotest consequences. Even the "look to lust" is a guilt of heart, and a defilement in the sight of the Lord. The "look" must be left to the conscience and to the Judge. It cannot be reached by either civil or canon law. In this "everyone must give account of himself to God." The act, however, is within the purview of all law. Both the law of the Church and the law of the State may authorize and so complete divorce between a man and a guilty wife. This may be, indeed should be, done upon the ground of the physical destruction of marriage, which is absolute and irreparable as far as the woman is concerned.

In the case of the man the consequences are different. It is physically impossible for him to "confuse" the blood of his own wife. He may "confuse" the blood of another man's wife and that of her husband too, and thus involve all parties in consequences of horror. Indeed, there is no greater enemy to society and government than the libertine ; and no one against whom a ban is decreed by nature and revelation more disastrous in mortal life and more portentous as to the future. Still the fact remains. The woman and the man must each remain female and male. She may commit physical adultery against him, but he cannot against her. But marriage is also naturally a psychical union. It becomes, moreover, through the sacramental mystery, a spiritual union. The natural psychical union is set forth in the first historic account of the institution of marriage, "Therefore shall a man

leave his father and his mother and shall cleave unto his wife" (Gen. ii. 24). References to this are made in several places in the Old Testament, which show that this is a whole personal and reciprocal cleaving one to the other. Observation and experience of common life show, in marriage, this mutual union, not only of body but of soul also; while truly Christian marriages have set to them the further seal of spiritual inter-communion. Now we have to take into view the horror of possible unfaithfulness. We have considered it, on the side of the woman, as to its physical consequences. On that side it has also indescribable evils that reach soul and spirit. The man, too, may wound irreparably the soul and spirit of his faithful wife. "Whosoever shall put away his wife, and marry another committeth adultery (*ἐπ' ἀντίν*) against her" (S. Mark x. 11). Except for the cause of adultery is of course understood, for that is expressed in the parallel passages of S. Matthew and S. Luke. But the declaration is express. A man may commit adultery "against her," *i.e.*, against his own wife. Since he cannot commit it against her body, he can only commit it against her soul and spirit. Still the word of very worst significance is used. Although this is the only passage in Scripture that positively declares the possibility of psychical adultery; and though this turns upon the significance of the Greek particle *ἐπι*, yet no other translation than "against" seems to fit into the context.

Does this adultery against his own wife dissolve the marriage bond? May a woman put away her husband "for the cause of adultery?" Our Lord does not say

so, in express terms. Nature does not say so. In all but the very highest forms of civilization the man's unfaithfulness is not regarded as adultery against his own wife. It may be such against another man, but not against her. The reason is obvious. Low forms of civilization take little if any note of the human sentiments and sensibilities. They only note the physical relation of married life. In all forms of civilization, however, it is universally considered that physical adultery, because committed against him, sets the man rightfully free from the bond of marriage. In the highest forms of civilization only, where culture has wrought most deeply its refining influences, do we find that sensitive psychical relation in marriage which may be outraged by a husband's unfaithfulness. No doubt it is felt to be a wrong, by any woman thus injured, whatever be her culture; but her natural indignation is far more against the other party than it is against her own husband. She does not naturally feel that it is impossible to receive him back. She does not feel as he would in the converse case. She does not feel that his blood is, in his own person, so confused that the marriage has been physically broken. This natural sense and feeling among women is a fact which cannot be ignored in any thorough treatment of the subject of marriage and divorce. Still our Lord recognizes, and society should duly estimate, while both Church and State should provide for, the fact of psychical adultery. The man is married, not merely to the body, but to the whole personality—body, soul, and spirit—of his wife. Before God and man he owes to her the duty of faithfulness in all respects. If he

wrongs her all he can, he is morally equal to the woman who is guilty. He is none the better morally, because he cannot do one specific evil deed, which she can do. In all fair judgment, he is equally guilty with her. Still the difference in consequences remains an immutable fact, and should not be disregarded in legislation upon the subject either by Church or State.

The State must follow natural law. If it discerns it aright, it will never thereby violate revealed law, for the One Lawgiver presides over both. The State must give absolute divorce from an adulterous wife. Its own self-preservation demands it. A family thus ruined cannot be patched up, so as to fit again into its place in the foundations of social order. The Church must do the same, not according to natural law, but according to the express law of Christ. But the case is different with the woman, against whom psychical adultery has been committed. Her wounded heart, her outraged soul, her shocked and bruised spirit entitle her to all possible relief. She should not be compelled to live with him who has violated his trust, and broken all the moral ties of marriage. The mutual contract and the social or civil contract of marriage he has vitiated in every moral particular ; while, if he has passed through the holy mystery, he has added sacrilege to immorality. He must answer before God for all these. He is amenable to Church and State directly upon the civil contract. He is, to his own wife, a mean and selfish breaker of the mutual contract. His case, however, is not wholly beyond the remedial effect of penitence. He may be forgiven upon peni-

tence by Church or State. Even should his own wife forgive him, and receive him back, she would not thus complicate a confusion of blood.

The question, "May a divorced woman marry again?" is not yet fully answered. We must revert to the general principles; "Adultery entitles to divorce, and divorce breaks the bond of marriage." Does psychical adultery entitle to divorce? If it were possible to look at this question in a purely judicial spirit, without any side influences of sentiment, and without prejudices of feeling arising from special cases, the decision according to natural law would be in the negative. The wronged wife should be granted all possible protection, and be supported in a separation where her soul could dwell in peace; but it would not follow that she might marry another man so long as her husband liveth. Still, if she did marry another man, she should be to her former husband as if he were dead. She could not go back to him, for that would be confusion. Nature and revelation both show this (Deut. xxiv. 1-4). Statutory law, either in Church or State, cannot be framed upon mere considerations of what is highest and best. That belongs to culture in the social state, and to religion in ecclesiastical relations. It would be best undoubtedly for the wronged wife to remain in simple separation. To compel her to do so, by law or canon, might lay too heavy a burden for general bearing, and prove a snare to the weak, the impulsive, or the unwary. The average strength must be provided for. Now the Old Testament allows such remarriages (ver. 2, "And when she is departed out of his house, she may go and be another man's"). In the

New Testament our Lord does not settle the question. His words, however, in S. Mark x. 12, if taken alone, would certainly forbid such remarriages. They are, "And if a woman shall put away her husband, and be married to another, she committeth adultery." "Whosoever putteth away his wife and marrieth another, committeth adultery; and whosoever marrieth her that is put away from her husband committeth adultery" (S. Luke xvi. 18). The great exception is not mentioned. Neither is it mentioned in the preceding verse of S. Mark. It is given, however, in the parallel passages of S. Matt. In all fairness, therefore, the exception must be understood, and made to qualify these words of two evangelists; for the larger declaration includes the lesser, while the lesser does not contract the larger. Although these words of Jesus were spoken when and where great laxity of divorce was practised, allowed socially, and even permitted by civil law, among both Jews and Gentiles, yet they contained that universality which was characteristic of His sayings. They expressed the law upon this subject which binds all persons everywhere, in all time. In definite language He gave the man only the right to divorce. But he also allowed it for the one cause; yet, if the "*éπιτι*" is to be taken in its full force, He certainly recognized psychical adultery, and thus placed the man and the woman on an equal footing. The great wrong, be it therefore either wholly personal or only psychical, entitles the other party to divorce with the consequent right to marry again. Still, the natural fact remains that physical adultery breaks the marriage bond completely, so that the man can no

longer keep his wife without the guilt of confusion ; the consequences of which can only be discovered when all the effect of unity of flesh shall be made known. Only the wildest imagination can conceive the everlasting horror of a persistent personal union—through misused immortal bodies—between those who produce and persist in this dreadful yet possible “confusion of blood.” The injured wife, however, does not become physically divorced. She is free, therefore, to retain, if she will, her unfaithful husband. She would not violate natural law in so doing. While therefore she has the right of divorce, it remains to her own choice whether or not to exercise the right. Yet the words of S. Paul seem, at first view, to be against this view of woman’s rights. They are, “For the married woman is bound by law to the living husband ; but if the husband be dead she is loosed from the law of the husband ; so that, the husband living, she shall be proclaimed an adulteress if she be joined to another man, but if the husband be dead she is entirely free from that law so that she is not an adulteress though married to another man ” (Rom. vii. 2-3). “The wife is bound in law through the whole time her husband lives, but if her husband be dead she is at liberty to be married to whom she will, only in the Lord ” (I Cor. vii. 39). If the Greek of the New Testament gave a definite word like the English for husband, these passages would forbid remarriage even to a divorced woman, so long as her former husband was alive ; but the word always used is *ἀνὴρ*—man—the context showing the man’s relation. The context of these passages makes it necessary to translate *ἀνὴρ* by

husband. The obvious interpretation of the passage requires a strict adherence to the sense of husband, and not merely that of man. It would, then, appear that S. Paul was laying down the general law of marriage as a union for life. He took no account of the exception made by our Lord. Divorce was not in view. That breaks up and destroys marriage. Though the man lives, the divorced wife has no husband, she is not therefore bound to that man so long as he liveth.

I know no other passages of Holy Scripture, and no other principles of natural law, that touch these points. If there be no other, then, I think it is demonstrated that divorce is allowable to either party for the one cause; but, while the man must take divorce in order to escape accumulated guilt and evil, the woman is free to take it or not as she will.

## CHAPTER X.

### HISTORIC CANON LAW AND OPINIONS OF CHRISTIAN FATHERS.

An immense body of Canon Law upon marriage and divorce is in existence. It extends from the second century of the Christian era to the present time. If it manifestly embodied the best human wisdom of the Christian mind, and was plainly illumined by the ever-present Spirit of God, we should have merely to transcribe its decrees, and apply them, as far as they may be applicable, in form, spirit, and circumstances, to requirements of our own age and environment. Whoever studies these canons carefully will, however, find them far from ideally perfect. Indeed, from very early times, if not from the very first, they exhibit other signs than those of wisdom, and other marks than those of the inspiration of the Spirit.

One characteristic pervades them. Though less pronounced at first, it developed steadily as time progressed, soon became the distinguishing note, and was not long in becoming the one ruling principle of Canon Law, in respect to marriage and divorce.

This characteristic was the assumption that "concubiscence hath the nature of sin." Hence defences were thrown out against it, not only far beyond the

letter of the moral law, but as far as they could be made to stand. This was consistent with the accepted principle; for, if the thing were evil in itself, it should not only be forbidden, but all the approaches to it should be guarded as far as possible in advance. The thing itself was universal. It was natural. Though its seat was the human body, yet it threatened the soul of man, and in the fallen state had become at war with his spirit. “For the flesh lusteth against the Spirit, and the Spirit against the flesh: and these are contrary the one to the other” (Gal. v. 17). “For they that are after the flesh do mind the things of the flesh; but they that are after the Spirit, the things of the Spirit. For the minding of the flesh is death; but the minding of the Spirit is life and peace. Because the minding of the flesh is enmity against God; for it is not subject to the law of God, neither indeed can be. So then they that are in the flesh cannot please God” (Rom. viii. 5–8).

It will be remembered that the early canonists were all converts from heathenism. Heathenism never thought that the body was good. The wisest heathen—those who believed in the immortality of the soul—regarded their bodies either as clogs upon the soul, or so remote in essence that their passions and appetites had no affinity with the soul. Hence the two extremes of license and asceticism appeared among the heathen. The one gave free rein to natural desires, believing that the soul could not be debased by whatever the gross matter of the body could get or do; while the other mortified the body, in order that the soul, less impeded in its action, might be left free for

high aspirations and longings. This latter and better characteristic of heathenism was brought into the life and practice of the early converts. The canonists among them showed its influence in the canons they devised for Christian discipline.

They appear, however, not to have made that great distinction which Christian wisdom should have taught them. They were lifted, or should have been lifted, by the Christian revelation, into a higher view of the body—including its natural appetites and passions—than that derived from the gross conceptions of heathenism. They believed, and strenuously maintained, against many heresies—some of which sprang up in Apostolic times—that our Lord Himself took into union with His person complete humanity, and was in all respects, even as to the body, man. Hence, while they rejected the doctrines which threw discredit upon the natural human appetites and passions, they should also have ejected all their influence from their minds. This they did not effectually do even at first, and later do not appear even to have attempted. From the fifth century at least, if not earlier, the body of the canon law not only does not rebuke, but rather sanctions the notion that the body can only be kept in due subjection to the spirit by stamping down or driving out its natural appetites and passions.

This mistake caused confusion between Casuistry and Law. Casuistry is the application of general principles to specific cases. Law lays down invariable rules for all. In the application of principles to specific cases the peculiarities of the cases require due consideration. It may appear that a general principle does not apply,

or that its scope becomes limited by the time, the condition of the person, or the circumstances that environ him. Hence, while the minding the flesh is enmity against God, and while to guard against it one should "mortify the body," yet the character and degree of requisite mortification would vary in every instance. "Those to whom it is given," might, and on all due occasions should, not merely control, but absolutely deny their natural appetites and passions. None ought to gratify them beyond the rule and law of due proportion, thus avoiding all excess; while they should, of course, never be led by them to do evil. But to embody general principles in such specific enactments, that what may be good in exceptional cases should be made the invariable law for all, is not only an attempt to abridge "the liberty wherewith Christ hath made us free," but it is to weave snares for souls, to put stumbling-blocks in the way. It will also aggravate the very evil it proposes to check. Every law, which abridges true liberty, invariably incites resistance, and incidentally promotes license; *e.g.*, celibacy, which in some cases helps deepen and strengthen exclusive devotion to God and His service, if it be imposed upon a whole class of men, results in driving many of them into secret sin, with all its consequent woe, corruption, and mischief, both personal and social.

The true principle is, that the body is good; that its natural appetites and passions were implanted in it by the Creator, Who looketh upon all His work, and behold it is very good. He created man with both the masculine and feminine principles in him, which He afterward separated into two persons. He created

him after His own image, "male and female created He them." He placed the human race thus in analogy and concord with His whole creation. The desire of man and woman, one toward the other, had its correspondence in all other forms of earthly existences, and was as natural and innocent as the attraction of magnetism, or the coalescence of chemical affines. If this reciprocal attraction between man and woman had been simply sensual, it would have been honorable and innocent in itself; it would only have been wrong and productive of evil when it transgressed necessary physical bounds, or was permitted to incite the imagination, intrude into the mind, and invade the domain of the spirit. These evils followed the fall of man; who ever since has been confused in his nature, "the flesh lustng against the Spirit and the Spirit against the flesh." Doubtless a wise casuistry took this natural confusion into view, and it was a good rule of discipline to "mortify the body." But this self-mortification should be voluntary, not enforced. In self-imposed discipline, or even in discipline prescribed by authority, it should never have been assumed that the body is essentially evil. The mortification of the body should never have been regarded as good in itself, much less as meritorious before God, but rather as a means to an end, a means of helping the human spirit to retain—under the Spirit—its proper supremacy in the person, and to aid it against the counter-lusting which came from confusion engendered by the fall.

Another fact, moreover, seems to have been quite ignored, in the minds of the Christian canonists, from the first. This was that human concupiscence—*i.e.*,

mutual desire—was not solely, not even chiefly, sensual. It was magnetic, and produced satisfaction and refreshment by mere local proximity ; and as such promoted, severally and reciprocally, psychical and spiritual advancement and growth. It was also good for the soul and spirit of man, as well as for his body, that he should have a helpmeet for him. Whoever perceives and duly appreciates the tripartite unity of every human person—*i.e.*, body, soul, and spirit in one personality—may also perceive and appreciate the tripartite union of every well-matched man and woman. This union must be exclusive, in order to be real and true ; but, when real and true, the higher will rule the lower, the spirit will guide the soul, and control the body ; but each part should be free and vigorous in its own sphere, that all might work together in harmony.

Death ruthlessly breaks up the closest and sweetest marriage unions. Nature gives no assurance that they can be renewed after death. Our Lord says, “In the resurrection they neither marry, nor are given in marriage” (S. Matt. xxii. 30). In this respect, as in others also, “it doth not yet appear what we shall be: but we know that, when He shall appear, we shall be like Him; for we shall see Him as He is” (1 S. John iii. 2). “Every man that hath this hope in him, purifieth himself, even as He is pure” (ver. 3). Passages of Scripture, like these, are redolent with wisdom and grace. Using them wisely, a good system of casuistry will find place for such precepts as these : “All things are lawful unto me, but all things are not expedient” (1 Cor. vi. 12). “Art thou loosed from a wife? seek not a wife” (vii. 27). “This is good for the present

distress" (ver. 26). But casuistry, as we have said, is not law. Every case is peculiar, and requires separate treatment. One man, loosed by death from his wife, may think it good to abide alone. Another may think it better to seek again for a wife. God, in His providence, has left us all free in this respect. Opposition to second marriages is strong yet in the Greek Church, where it is not allowed at all to the clergy, and only to the laity through a ritual ceremony that teems with insults to manliness, and declares that such marriage is regarded merely as a sensual union, and only to expect a blessing as Jesus blessed the Magdalen and forgave the thief on the cross.

This same gross notion appears early in Canon Law, and exemplifies again the inveterate heathen and Manichæan ideas which clung to the minds of the early and later "fathers of the Church," and led them to impose by law general restrictions, which were violations of liberty; instead of tendering advice, which might have resulted in a good and useful system of casuistry. By the latter many men might have been persuaded, who by the former have been driven, through indignation of free thought as well as incentives of passion, not only into literal violation of law, but into actual immoralities. The Canon Law, on marriage, teems with mistakes and follies which always characterize those who attempt to be "wise above that which is written." God's law, as shown in nature and revelation, fills the limit of law. What goes beyond it leaves wisdom behind, and promotes evil rather than good.

The time has come, and America is the place pre-

pared, wherein Canon Law will be subjected to the same rigorous criticism from which even the Holy Scriptures are not exempt. In this era of progressive thought, and in this western region of bold, perhaps too bold but none the less actual, radicalism, it is useless to attempt to sustain the whole body of Canon Law. Christianity, as it exists around us, may be induced to reverence and obey all the well-established principles of Canon Law. If the *Ideal* of Canon Law were only real, and it could be shown that it is a body of statutes formed by the best wisdom of the Christian ages, and inspired evidently throughout by the Holy Ghost, then it should be enforced; and all right-minded Christians would submit to it, and agree upon its enforcement; but this Ideal is not real. Hence, if we would succeed in enforcing any Canon Law we must show that it is based upon sound principles, and formulated wisely. The accumulations of formal canons upon marriage and divorce, or any other subject, although they make a long chain extending through centuries, must finally hold or break according to the tenacity of the first link. If the first principle be defective, the whole is weak. The long chain cannot bind those who return to first principles, and who claim the right both to use and teach all the liberty which God in Christ, through nature and revelation, has granted to mankind.

Those who would promote good morals by enacting good canon and civil laws, and thereby incidentally reform and educate the social moral sentiment, must be content to build anew from the foundations. A few may yield to the letter of Canon Law, and be content

to obey it, because of an ideal reverence, or because its continuance in one line for ages throws a strong presumption in its favor ; but its enactments cannot be enforced now upon honest and earnest minds and hearts, upon the mere ground of authority. Therefore the review of Historic Canon Law should be radically pursued. *Radical* is a strong word, but its simple meaning only is “at and from the root.” There is a root for every sound principle of Canon Law. Forms that grow from this root were living at first, and will continue to live so long as Christianity continues to be the Living Body of Christ. Historic Canons should be tested in every cited case, and their strength or force correlated with their principles, by which only can they stand or fall.

The very earliest extant body of canons—usually styled The Apostolical Canons—shows that the influence of heathen and Manichæan ideas had already appeared, even in the primitive period of the Church. Though these canons are no longer regarded as actually apostolic in origin and authority, they certainly preceded all known councils of the Church, and were in existence before the third century.

They rebuke and distinctly condemn the notion that marriage was an unholy state, *e.g.*:

“C. V. Let not a Bishop, Presbyter, or Deacon put away his wife under pretext of religion ; but, if he put her away, let him be (suspended, F.) (excommunicated, H.), and if he persist let him be deposed.” \*

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\* In these translations I have followed Hammond and Fulton, comparing both with the Greek, and accepting now one’s version and now the other’s, in whole or part.

“C. LI. If any Bishop, Presbyter, or Deacon, or any at all of Sacerdotal Catalogue shall abstain from marriage, or flesh, or wine, not for discipline (by way of religious restraint, H.), but because he abhors them ; forgetting that all things are very good, and that God made man male and female ; but blaspheming slanders the work of creation, let him amend, or be deposed and cast out of the church. In like manner also a layman.”

The Synod of Gangra, in Paphlagonia, held between A.D. 325 and A.D. 341, enacted the following :

“Canon I. If anyone condemns marriage, or abhors and condemns a believing and pious woman who sleeps with her own husband, as if it would be impossible for her to enter into the kingdom ; let him be anathema.”

“Canon IV. If anyone shall adjudge concerning a married presbyter that it is unlawful, he officiating, to receive the oblation ; let him be anathema.”

“Canon IX. If anyone remain virgin and continue continent, abstaining from marriage as if it were detestable and not because of the very beauty and holiness of the virginity ; let him be anathema.”

“Canon X. If anyone of those, virgin because of the Lord, shall insult the married ; let him be anathema.”

In the summary which follows these canons occur the following sentences :

“These things we write not to cut off those in the church of God who wish to practise asceticism under the Scriptures ; but those who carry the pretence of asceticism even to superciliousness, exalting them-

selves over those living more simply and introducing novelties contrary both to the Scriptures and the Ecclesiastical canons. We do indeed admire virginity coupled with humility, and esteem continence accompanied by godliness and gravity—but we honor also the holy connection of marriage."

This Synod though post-Nicene, had wide influence in the early Church, and its canons were sanctioned and adopted by the General Council of Chalcedon, A.D. 451, which council recognized that vows of virginity were binding, and excommunicated those who broke them, but made no distinction of honor or sanctity between virginity and marriage.

These canons and expressions of opinion show that the notion was already prevalent that the body being material was essentially evil, and that its natural propclivities were to be not merely controlled, but absolutely denied. Hence their strong assertion that marriage is a holy estate, and their condemnation of those who abhor it as if it were evil.

Very early however, the Manichæism, thus condemned, appeared in the Canon Law itself. Indeed one of the "Apostolic Canons" themselves shows its influence.

"Canon XXVI. Of those who have been admitted to the clergy unmarried, we ordain that readers and singers only may, if they will, marry."

This forbade, or at least disapproved the marriage of the clergy after ordination. Why? If marriage were a holy estate why should not the clergy enter into it? If the canon were merely advisory, then a less stringent term than "ordain" would have been used. It

was evidently disciplinary, and thus invaded the personal rights of every ordained clergyman. It was for him to decide for himself whether the holy estate of matrimony would promote or impede his efficiency. Every case would depend upon its own conditions and circumstances. Thus early did casuistry invade law, and Manichæism enter into canons.

These "Apostolic Canons" seem also to teach that "intercourse," though violent, makes a physical union, which binds the wronging party, at least, to the party wronged, so that he may not take another wife in her lifetime.

"Canon LXVII. If anyone shall force and keep a virgin, not betrothed, let him be suspended (excommunicated, H.). And let him take no other, but retain her whom he hath chosen, even though she be a poor woman."

The exception "not betrothed" is probably inserted because betrothal was early regarded as partial marriage. It was the expression of consent, which was and is one of the essential parts of matrimony. The violation of a betrothed virgin would therefore be both a wrong to her and to the man to whom she was affianced. Betrothal was sometimes a public religious ceremony. The consent of the ravished woman, to live with her ravisher as his wife, seems to have been taken for granted. Such consent could not have been given by a betrothed virgin, for she had already given that to another. The latter complication is not considered in this canon. Every case was probably treated according to its attendant circumstances; and would depend very much upon the character and disposition

of the man wronged, as well as upon the feeling and will of the woman. The evil would be physical, and ineradicable, but it might be condoned ; for the woman, though no longer a virgin, was at least equivalent to a widow, which, indeed, the natural impulse of the wronged man—though every Christian would of course resist it—would tend to make her in fact.

The Synod of Ancyra in Galatia, held A.D. 315, enacted the following, afterward sanctioned at Chalcedon :

“Canon XI. Those betrothed virgins, afterward carried off by others, it is decreed, shall be restored to those to whom they were formally betrothed even though they have suffered violence from the others.”

Upon the subject of second marriages there was some decided action in the early Church. They were not encouraged, but they were certainly not condemned. The drift, however, was strong toward their condemnation. The heretical Cathari were so opposed to them that they would not communicate with digamists, *i.e.*, those who had been twice married, even though death itself—and not divorce merely—had dissolved the union. Hence the Council of Nice enacted,

“Canon VIII. Concerning those naming themselves Cathari, whenever they return to the Catholic and Apostolic Church, the Holy Synod decrees that they who are ordained by laying on of hands shall continue as they are in the clergy. But it is above all things necessary that they profess in writing that they will observe and follow the decrees of the Catholic and Apostolic Church ; in particular that they will communicate with persons who have been twice married,” etc.

Among the Apostolic Canons appear, upon this subject, the following:

"XVII. He who has after Baptism been twice married, or has had a concubine, cannot become a Bishop, Presbyter, or Deacon, or any other part of the Sacerdotal list."

APOSTOLIC CON., III., 2. "You ought to know this, that to marry once according to law is righteous, because it is according to the will of God ; but second marriages after a promise of widowhood are wicked, not on account of the marriage itself, but because of the breach of promise. Third marriages indicate incontinence, and marriages beyond the first are manifest uncleanness, for in the creation God gave one woman to one man. To the younger women let a second marriage be allowed, after the death of the first husband, lest they fall into condemnation of the devil."

This is based evidently upon the following Scripture: "But the younger widows refuse, for when they begin to wax wanton against Christ they will marry ; having condemnation because they have cast off their first faith. And withal they learn to be idle, wandering about from house to house ; and not only idle, but tattlers also and busybodies, speaking things which they ought not. I will therefore that the younger women marry, bear children, guide the house, give none occasion to the adversary to speak reproachfully" (1 Tim. v. 11-14).

Evidently the Apostle was setting forth the general principles ; that vows for Christ's sake, made for the discipline of the person, and for increasing efficiency in holy worship and works, should only be taken by

persons of long experience. To persons too youthful such vows were dangerous, and might lead to scandal. He makes no comparison, as to sanctity, between the single state and that of marriage.

A very early council, that of Neocæsarea—about A.D. 315—set forth the following:

“Canon VII. A Presbyter must not be a guest at the wedding of a person who is marrying the second time; for whereas the digamist needs to undergo penance, what must a Presbyter be who sanctions the marriage by his presence at the feast.”

The Council of Laodicea, about A.D. 365, adopted at Chalcedon, gives the following:

“Canon I. It is right, according to the Ecclesiastical Canon, that those who have freely and lawfully joined in second marriages, but have not made a clandestine marriage—a short space having elapsed spent by them in prayer and fasting—should by indulgence be allowed to receive the Holy Communion.”

A consensus of Scripture, of conciliar decrees, and of opinions of early Christian Fathers upon the *lawfulness* of second marriages may not be claimed; for while the two latter evidently regarded them as at least inexpedient, the first is silent upon the subject. Both Fathers and Councils agree, or very nearly so, that second marriages should be forbidden to the clergy. But they give either no reasons, or reasons very inadequate for the prohibition. They constantly confuse the principles of casuistry with those of law. Hence, as far as the word of God and the just authority of the Church is concerned, the liberty to contract second, or even many marriages, is personal, and must be decided

by one's own judgment and conscience, acting alone or under freely chosen advice or authority.

After the Church became the established religion of the Roman Empire, and the great controversies upon the faith were settled by the General Councils, then canons of discipline began to abound, and went on increasing in stringency for ages. It seemed to be an accepted principle, that the further hedges of canons could be set beyond the boundaries of natural and revealed law, the better would public morals be secured. Experience, not only in social life but in clerical life also, soon showed that undue contraction of just liberty only promoted license. Councils then made the mistake of resorting to still more stringent laws, which of course only further aggravated the evils.

The same virus of Manichæism, and the same tendency to confuse casuistry with law, appear in the opinions of the early Fathers, and in conciliar decrees, in respect to divorce. All agree that divorce is lawful on account of adultery, and base their opinions and judgment upon the words of Christ. But of the effect of divorce upon the liberty of either party to marry again, it is impossible to obtain a consensus. The tone both of opinions and decrees, however, is strongly against the remarriage of divorced persons. The idea lingers tenaciously, that adultery breaks but does not wholly destroy the marriage bond, and hence the marriage of either party, although justly divorced, is never encouraged, often disallowed, and sometimes forbidden.

A difference, also, is made between the man and the

woman; although the moral guilt and sin are the same to either, yet the physical effect being different, it is stated to be the duty of the man to put away an adulterous wife, but not the absolute duty of the woman to do so. Upon this point writes as follows "S. Basil (A.D. 370), c. 21. If a man has carnal knowledge of an unmarried woman he is guilty of fornication and ought to be severely punished, but there is no canon which requires him to be treated as an adulterer, and a wife ought to cohabit with such a husband. But if a wife is guilty of adultery, she is divorced, and a man who retains such a wife is held to be impious. Such is the custom, but the reason of it does not appear."\*

The reason which does not appear to S. Basil is evidently the physical difference between the two cases.

Dr. Fulton cites other opinions of the Fathers. "*Hermas* (circ. A.D. 100-150). As long as he (the husband) remains ignorant of her (an adulterous wife) sin the husband commits no transgression in living with her, but if he knows that his wife has gone astray, and the woman does not repent, but continues in her fornication, and he then continues to cohabit with her, he is a partaker in her crime, and a sharer in her adultery."

The reason, not given by *Hermas*, clearly is the physical "confusion of blood" which would take place in the body of the faithless woman, for which the ignorant husband would be morally guiltless, but of which, when informed, he would become a sharer in the guilt both physically and morally.

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\* *Laws of Marriage*: Fulton, p. 250.

MARRIAGE AND DIVORCE.

*Ibid.* "If the wife continue in her vicious practices, the husband should remain by himself, and put her away. But if he put his wife away and marry another, he also commits adultery."

*Ibid.* "If the adulterous woman should repent and wish to return to her husband, assuredly the husband . . . ought to take back the sinner who has repented, but not often ; for there is but one repentance to the servants of God."

*Ibid.* "In case, therefore, that the divorced wife repent, the husband ought not to marry another after he has put away his wife; and in this matter man and woman are to be treated exactly alike."

The evident contradictions in these extracts arise from the want of a fixed principle of judgment. The radical effect of adultery is not adverted to, and hence the vacillation of opinion and confusion of ideas.

"*Clemens, Alex.* (circ. A.D. 200), Strom., ii., 23. But that the Scripture counsels marriage, and does not allow its union to be forsaken, it has openly declared in the law : 'Thou shalt not put away thy wife except for fornication.' And it holds a second marriage of either of the two separated persons, during the lifetime of the other, to be adultery."

This has just the weight—no more and no less—than belongs to the private judgment of S. Clemens. His appeal to Scripture leaves the matter open. Whoever sees in Scripture liberty of divorce for sufficient cause, is free to differ from S. Clemens.

"*Tertullian* (circ. A.D. 200). Christ prohibits divorce, saying : 'He who puts away his wife and mar-

ries another, commits adultery, and he who marries her that is put away, commits adultery.' Thus He both forbids divorce, and the marriage of a divorced woman. . . . But He prohibited divorce conditionally; that is to say, in the case of a person who puts away his wife in order to marry another. . . . She who is not lawfully put away is not put away, and he who marries her is an adulterer. A marriage that is not justly broken, stands; and to marry one whose marriage stands, is adultery. Thus what He prohibits under a certain condition He does not absolutely disallow, and what He does not absolutely disallow He permits in certain cases."

This argument is in favor of the liberty of marriage to divorced persons. The argument remains good, whatever private opinions of Tertullian may elsewhere seem to conflict with it.

"*Cyprian* (circ. A.D. 250). When our Lord was questioned, He said that a wife must not be put away save for the cause of adultery; such honor did he put upon chastity."

"*Lactantius* (circ. A.D. 320) Inst., vi., 23. The divine is not like the civil law, which holds that none but a married woman can commit adultery, while her husband, however many women he may take, does not commit adultery. The divine rule so joins the twain in marriage, that is to say, in one body under an equal law, that he is an adulterer who rends apart the union of that body."

It is evident that the civil law has in view the physical effect of adultery, by which a man cannot commit adultery against his own wife; while Lactantius has in

view the moral pravity and the rending apart of the psychical union.

“*Ambrose* (A.D. 333-397). Let no man deceive himself with human laws which declare that adultery is not committed with a single woman, but only with one who is a wife. Every unlawful sexual commerce is adultery ; and what is unlawful in a woman is unlawful in a man. The same chastity is due by the husband as by the wife, and any sin committed with a woman who is not his lawful wife is condemned as the crime of adultery.”

“*Idem*. It is not lawful for a woman to marry if she put away her husband for fornication.”

These are expressions of the personal opinions of S. Ambrose, and have all the weight—no more and no less—that the name of Ambrose carries.

“*S. Basil* (A.D. 370), e.g. The law of Christ forbids divorce equally to man and woman saving for the cause of fornication, though custom requires women to retain their husbands, even when guilty of fornication. A man who is deserted by his wife may marry again ; and even if he was divorced for adultery S. Basil is not certain that the second wife is guilty of adultery. A wife who is divorced may not marry, neither may a man who has divorced an innocent wife.”

“C. 31 (afterward confirmed by the 93d Trullan Canon). A woman whose husband is absent and who marries another without certain assurance of her husband’s death is guilty of adultery.”

“C. 36 (afterward approved, Trull. C. 93). A soldier’s wife marrying after long absence of her husband, but without certain assurance of his death, is more ex-

cusable than another woman because his death is probable."

"C. 39. She who lives with an adulterer is guilty of continuous adultery so long as the connection lasts."

"C. 46 (confirmed, 93d Trullan). A woman who has married a man deserted by his wife, and who is afterward dismissed upon his wife's return, has been guilty of fornication though ignorantly. She may marry if she will, but would do better to remain unmarried."

"C. 47. A woman dismissed by her husband, in my judgment ought to remain unmarried."

"C. 77. A man who divorces his wife and marries another is an adulterer."

These quotations not only show the personal opinions of S. Basil; but they are in some degree his testimony as to the opinions generally received in the Church. It is, however, quite impossible to determine which is opinion and which testimony. The points therefore stand or fall according to the arguments, upon general principles, that are or may be brought forward in respect to them.

"*S. Jerome.* So long as a man lives, though he be an adulterer or a sodomite, or swallowed up in every conceivable vice, and though his wife may have left him because of these crimes, he is yet held to be her husband, and it is unlawful for her to take another man. . . . He who marries a divorced woman is an adulterer, whether her husband divorced her, or she was divorced from her husband; he who marries her is an adulterer; and, while her husband lives, the woman is an adulteress if she marries another man."

S. Jerome evidently gives the strictest possible interpretation to S. Paul's words, "For the woman that hath a husband is bound by the law to her husband so long as he liveth" (Rom. vii. 2). The question is whether divorce does not actually dissolve marriage; in which view a divorced woman no longer "hath a husband."

"*St. Augustine* (circ. A.D. 400), *De conj. adult.*, lib. i., c. 18. The tempter may make these suggestions: 'The Lord hath said, Whosoever putteth away his wife save for the cause of fornication, and marrieth another, committeth adultery; but you who have put away your wife for that cause will not commit adultery if you marry another.' To such a suggestion let him answer out of a well-instructed heart, that he is indeed guilty of a more heinous adultery who marries another after putting away his wife without the cause of fornication; but that he who puts away his wife for that cause cannot be acquitted of adultery if he marry again; just as he is certainly guilty of adultery who marries a woman who has been put away, but not for the cause of adultery; while he is not to be acquitted of adultery who marries a woman who has been put away for that cause; and because the language in Matthew is somewhat obscure, it is more fully expressed in Mark: 'Whosoever putteth away his wife and marrieth another committeth adultery,' and likewise in Luke. It is not said that some commit adultery and others do not, but that 'whosoever putteth away his wife and marrieth another, he, without exception, committeth adultery.'"

"*Ibid.*, lib. ii., c. 4. A woman cannot begin to be

the wife of a second husband until she has ceased to be the wife of the first ; and she will cease to be his wife if he shall die, but not because he commits adultery."

But St. Augustine seems in his later days to have had doubts of the justice of some of his earlier views on this subject. Thus he writes as follows in his *Retractions* (ii., 57) : " I wrote two books on the subject of Adulterous Marriages, with the object of solving that most difficult question by the Holy Scripture. Whether I did it as clearly as I might, I am not sure, though I may have opened some of its recesses. The intelligent reader will be able to judge for himself."

Evidently S. Augustine cannot be claimed as authority. As far as he is concerned, the intelligent student of Holy Scripture is free to deduce from it the view that divorce is not merely separation, but an actual breaking of the bond of matrimony ; by which either party is freed from all relation to each other. If this be the effect of divorce, the innocent party may enter into another marriage. The guilty party, however, would have no right to avail himself or herself of his or her own wrong-doing. Guiltiness, in such a case, would destroy the right to marry again. Though it should be remembered that, while the moral guilt is the same whether the offender be the man or the woman, yet the physical consequences differ, as has been already sufficiently shown.

*Innocent, Pope (A.D. 402-417).* " The Christian religion condemns adultery equally in both sexes ; but women do not readily accuse their husbands of adultery, and secret crimes pass without punishment [in

this world]. Men, however, are wont to accuse their wives who have sinned, and when the sin is revealed the women are punished. The adulterous husbands are not excommunicated because their sin is not known, but they are to be expelled if the crime is disclosed. The guilt in either case is the same, though justice fails for lack of evidence."

"It is manifest that when persons who have been divorced marry again, both parties are adulterers. And moreover, although the former marriage appears to be broken, yet if they marry again they themselves are adulterers, but the parties whom they marry are equally with them guilty of adultery, as we read in the Gospel: 'He who putteth away his wife and marrieth another committeth adultery;' and likewise, 'He who marrieth her that is put away from her husband committeth adultery.' Therefore all such are to be repelled from the communion."

After all, the final appeal is to Holy Scripture. The question is, What do its succinct terms actually mean? Are the words of our Lord absolutely unqualified, or are they only the statement of the general moral law, to which exceptions properly belong? If the former, then divorce does not give the right to marry again. If the latter, then divorce breaks up marriage, and the liberty to marry again depends upon the facts and circumstances of every particular case.

*Alexius, Patriarch of Constantinople* (A.D. 1025–1043). "No clergyman is to be condemned for giving the benediction at the marriage of a divorced woman, when the man's conduct was the cause of the divorce."

"Women divorced by men whose conduct has been the cause of the divorce, are not to be blamed if they choose to marry again; nor are the priests to be blamed who give them the benediction. So, too, with regard to men."

"Whoever marries a woman divorced for adultery is an adulterer, whether he himself has been married before or not, and he must undergo the penance of an adulterer."

"Any priest who gives the benediction at the second marriage of parties divorced by mutual consent (which is a thing forbidden by the laws), shall be deprived of his office."

These quotations suffice to show that the subject of divorce has never been a settled one. The Fathers, like Councils, have held different opinions. As authority, therefore, cannot be pleaded, the whole matter remains an open question. It can be determined only by the Law of Nature and Revelation.

The following selections from the historic canons are intended to give a fair and sufficiently full summary of conciliar action in regard to divorce :

*Apost. Can.* 48. "If any layman put away his wife and take another, or if he marry a woman divorced by another man, let him be suspended ('excommunicated,' H.; literally, 'put out of bounds')."

*Conc. Elib.* (A.D. 305), c. 5. "Women who shall abandon their husbands with no cause precedent, and couple themselves with other men, shall not be received to communion even at their end."

*Ib.*, c. 9. "Moreover, a Christian woman who shall abandon an adulterous husband, who is a Christian,

shall be forbidden to marry again ; and if she marry she shall not receive the communion until he whom she has married is dead, unless the necessity of grievous sickness require it to be given her."

The distinction made by the word "Christian" is notable. If one party were heathen and chose to "depart," the case would be different, as, according to S. Paul, "a brother or a sister is not under bondage in such cases" (1 Cor. vii. 15). Moreover, the council itself does not class the fault itself under deadly sins, as it permits the communion to be given in "grievous sickness."

"*Ib., c. 65.* If a clergyman shall know his wife to be an adulteress, and shall not immediately put her away, he shall not be permitted to receive the communion even on his deathbed ; lest lessons of wickedness be given by the very persons who ought to afford an example of good behavior."

The social effect is here only in view. The private immorality is taken for granted ; and yet laymen are not specifically mentioned. So loosely were the canons of the early councils often framed !

"*Conc. Arelat.* (A.D. 314), c. 10. Concerning those who detect their wives in adultery, though they be young men and Christians, they are forbidden to marry again, and it is resolved to counsel such that they be strongly advised not to take other wives during the lives of their former wives, adulteresses though they be."

This council offers advice to rightfully divorced husbands to remain unmarried ; but it is very careful not to deny them the right to marry again.

“*Conc. Neocæsarea* (A.D. 314–323). If the wife of a layman has committed adultery and been clearly convicted, the husband cannot enter the ministry, and if she commit adultery after his ordination he must put her away ; or if he retain her he can have no part in the ministry committed to him.”

A mild ruling for a case of “confusion of blood” !

“*Conc. Mileirt.* (A.D. 416). According to the evangelical and apostolic discipline it is decreed that neither a man who is put away by his wife, nor a woman put away by her husband, may marry another, but that they must either abide so, or be reconciled to each other.”

Man and woman are here put upon equal ground ; and divorce gives to neither the right to marry again.

“*Conc. Andegav.* (A.D. 453). They who abuse the name of marriage by taking women whose husbands are living shall be excommunicated.”

“*Conc. Agath* (A.D. 506). If laymen forsake their marital connection without grave reason, or if any hereafter shall forsake it without exhibiting probable cause for their conduct, but abandon their marriages in order to engage in strange or unlawful connections ; that is to say, if they shall put away their wives before they have submitted their cause to the bishops of the province, and before the wife has been judicially found guilty, let them be shut out from the communion of the Holy Church and from the congregation of the people, because they are defilers of the faith and of marriage.”

“*Conc. Hereford* (A.D. 673). Let no man forsake his wife save, as the Gospel saith, for fornication. If

any man have sent away his wife, legally wedded, if he would be a Christian, let him abide so, or be reconciled to his wife."

"*Conc. Tolet*, xii. (A.D. 681). The Lord hath commanded that, save for the cause of fornication, a wife shall not be put away from her husband."

"*Conc. Trull.* (A.D. 691). A woman who leaves her husband and marries another is an adulteress, and a man who leaves his lawful wife and takes another is an adulterer."

Except for the cause, etc.

"*Conc. Forojul.* (A.D. 791). Though a man break the bond of marriage for the cause of fornication, nevertheless he shall not marry again while his wife lives, adulteress though she be ; and the adulteress shall never marry another husband. For we learn from the commentaries of St. Jerome that the words of the Gospel, 'save for cause of fornication' refer exclusively to the right of putting the wife away."

They who think that "the right to put away," when duly and lawfully exercised, dissolves the marriage, will differ in conclusion from both S. Jerome and this council.

"*Conc. Bituric* (A.D. 1031), c. 16. They who send away their lawful wives, save for the cause of fornication, shall take no other wives while the former live ; neither shall the wives take other husbands ; but let the parties be reconciled."

"*Decretals of Gregory IX.* (A.D. 1230), iv., 19, 5. Marriage is dissolved by the adultery of the wife, but in such wise that neither party may marry again ; and if the husband marry another woman his second mar-

riage is null, and the first marriage with all its duties and obligations is restored."

This order is remarkable both for its arbitrary tone and for its confusing impracticability. The opening statement is, however, clear and sound, "marriage is dissolved by the adultery of the wife." A dissolved marriage is certainly no longer a marriage.

"*Conc. Trid.* (A.D. 1563), S. 24, c. 7. If anyone shall say that the Church errs when she teaches, as she has taught in accordance with evangelical and apostolical doctrine, that the bond of marriage cannot be dissolved on account of the adultery of either party; or when she teaches that neither of them, even an innocent party who has not given cause by adultery, can contract another marriage while the other party lives; or when she teaches that a husband who puts away an adulterous wife and marries another, and also a wife who puts away an adulterous husband and marries another, is guilty of adultery, let him be anathema."

This stringent law of the Roman Church completes the development of western conciliar action by making marriage simply indissoluble. The utter impracticability of such a canonical rule was at once apparent, but was provided for, characteristically, according to the astute ways of the Roman Church, by resort to the "dispensing powers of the Pope." History shows how he exercised these powers. Those who had sufficient influence at the Vatican found little difficulty in having their marriages dissolved, not only on account of adultery, but for much less causes.

Among the Canons of the Church of England, "treated upon by the Bishop of London, President of

the Convocation for the Province of Canterbury (Arch. Cant. being dead), and the rest of the bishops and clergy of the said Province; and agreed upon with the King's Majesty's License, in their Synod begun at London, A.D. 1603," appear the following : \*

" *Canon V. No sentence of divorce to be given upon the sole confession of the parties.*

" Forasmuch as matrimonial causes have been always reckoned and reputed among the weightiest, and therefore require the greater caution when they come to be handled and debated in judgment, especially in causes wherein matrimony having been in the Church duly solemnized, is required, upon any suggestion or pretext whatsoever, to be dissolved or annulled ; we do straitly charge and enjoin, That, in all proceedings to divorce and nullity of matrimony, good circumspection and advice be used, and that the truth may (as far as possible) be sifted out by the deposition of witnesses, and other lawful proofs and evictions, and that credit be not given to the sole confession of the parties themselves, howsoever taken upon oath either within or without the court."

" *Canon VI. No sentence for divorce to be given but in open court.*

" No sentence shall be given either for separation *a thoro et mensa* or for annulling of pretended matrimony but in open court and in the seat of justice ; and that with the knowledge and consent of the archbishop within his province, or of the bishop within his diocese,

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\* HAMMOND : 1st Am. ed., pp. 261-263.

or of the dean of the arches, the judge of the audience of Canterbury, or of the vicars-general, or other principal officials, or *sede vacante* of the guardians of the spiritualities, or other ordinaries to whom of right it appertaineth, in their several jurisdictions and courts, and concerning them only that are then dwelling under their jurisdictions."

"Canon VII. *In all sentences for divorce bond to be taken for not marrying during each other's life.*

"In all sentences pronounced only for divorce and separation *a thoro et mensa*, there shall be a caution and restraint inserted in the act of the said sentence, that the parties so separated shall live chastely and continently; neither shall they during each other's life contract matrimony with any other person. And, for the better observation of this last clause, the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient caution and security into the court that they will not any way break or transgress the said restraint or prohibition."

"Canon VIII. *The penalty for judges offending in the premises.*

"And if any judge giving sentence of divorce or separation shall not fully keep and observe the premises, he shall be by the archbishop of the province, or by the bishop of the diocese suspended from the exercise of his office for the space of a whole year, and the sentence of separation so given contrary to the form aforesaid, shall be held void to all intents and purposes of the law, as if it had not been given or pronounced."

It will be observed that nothing is specified in these English Canons touching the grounds of divorce. Probably the civil law then in force was tacitly accepted, while the Scripture was then, as it is now, variously interpreted. The chief point to be remarked in these Canons is that "divorce and separation" give neither party liberty "during each other's life to contract matrimony with any other person." In this the canons of England accord with the general—though not universal—taste of western opinions and canonical action from very early times. This rule, however good in casuistry, and however salutary in its general operation, is not so firmly grounded in principle as to have proved, or as to be likely to prove, safe in law. In America, at least, both ecclesiastical and civil legislators are free to adopt or reject this rule, and certainly will do so according to their convictions. The question whether divorce—which all agree "dissolves" marriage—does or does not thereby set the parties wholly free *a vinculo*, cannot now be settled by recorded canons or decrees, because they are too conflicting. It must therefore be decided upon clear and well-established principles of law, natural or revealed. Thus the stress of experience clears the way for a simple treatment of this matter, upon original moral grounds. Views of course will be modified, according to opinions of natural justice, social stability, or the word of revelation. None of these absolutely, and beyond question, deny to divorced persons the right to marry again. They clearly do deny it to persons "separated" for other causes than that of adultery. Since, however, divorce "*dissolves*" marriage—as all agree—it

would be hard to prove that persons divorced still stood in the relation of husband and wife to each other.

In ecclesiastical legislation it would now be inexcusable, with all the lights and shadows of history before us, to ignore the clear distinction between casuistry and law. What may be good, in special personal application, may become very mischievous as a general requirement. The old canons confused casuistry with law, and hence their many self-contradictions, and the impossibility of accepting them as authority. If this old confusion be continued in the church in America, her canons will fail of efficiency even among "faithful men," while her influence upon the community will be quite lost. There is an open door before her; for the thoughtful and wise are waiting for her voice, upon many points indeed, but especially upon the law of marriage. If the church would exercise her rightful moral influence, she must be careful only to formulate such canons as are clearly based upon the supreme law of nature—which Christians believe to be the Law of God—coincident in both nature and revelation, indeed co-terminal in both. The specific enactments contained in Revelation would of course be binding upon the Church, and she should legislate in accordance with them; but she will be found thus to be merely carrying out natural law to its legitimate conclusions. She will, thereby, not limit natural liberty, but minister to its stability and permanence by showing its true boundaries. She would thus, as in other cases, instruct well in sociology, while promoting moral purity and holiness; and would show what is best for society, as

well as what is good for persons who would "be pure as God is pure."

While the ancient canons are nearly, if not quite, in agreement in allowing divorce for adultery, they differed as to allowing it for other causes. Felony, for instance, is sometimes admitted as sufficient cause, in case it was so serious as to effect permanent separation by the imprisonment of the offender. Though the reason for this is not given specifically, yet it was doubtless grounded upon the fact that a felon had put himself beyond the pale of law, and broken up as far as he could the foundations of social order and political organization. By making separation necessary and permanent, and thus putting it out of his own power to maintain or even to continue his family, he lost all rights in the family. This cause for divorce it would be dangerous to allow generally. It would conflict with the principle that all marriage should be "for better or worse." At the same time, not to allow it in any case, might be a great wrong; and would probably promote, rather than check, social impurity.

Long absence of the husband, with probabilities of his death, especially in the case of soldiers, sometimes left the woman free to marry again, but this was not a settled point of Canon Law.

*S. Basil, c. 36* (afterward approved by the 93d Trullan canon): "A soldier's wife marrying after long absence of her husband, but without certain assurance of his death, is more excusable than another woman, because his death is probable."

Insanity was not regarded as a ground for divorce.

*Timothy of Alexandria* (Circ. A.D. 380), c. 15.

" Question : If a man's wife is possessed to such a degree that it is necessary to chain her, and if he cannot contain, may he marry another ? Answer : I can only say that it would be adultery if he did."

Incompatibility of temper was never admitted as ground for divorce.\* It remained for modern state legislation to allow this most inadequate cause of divorce. It is simply a premium upon domestic discord. Instead of encouraging that mutual self-sacrifice, which gives the one rule of conjugal peace, it encourages the aggravation of every little cause of estrangement, and teaches the parties not to subdue evil dispositions and control the feelings, but rather to nourish anger and ill-will. It is doubtful if incompatibility of temper would ever become unendurable between parties who, by law and custom, were taught to regard marriage as ordinarily indissoluble. Law cannot cure inevitable evils ; while, in attempting to do so, it only aggravates them.

Impediments to marriage were : I. Such as made marriage impossible. II. Such as made marriage void from the beginning. III. Such as made marriage irregular and contrary to law.

I. Impotence made it impossible to consummate marriage. Hence, the contract between the parties could not be fulfilled ; the social contract was abrogated ; and even the sacramental mystery was divested of an essential substance. The marriage therefore was only an outward form, not a veritable union.

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\* The quotations made in the text are chiefly taken from "Laws of Marriage," by the Rev. John Fulton, D.D., LL.D. New York : E. & J. B. Young & Co., 1883.

It was however enjoined, that sufficient time should elapse to prove the fact beyond all doubt; while impotence, occurring after marriage, was no ground for divorce: it was then classed among the accidental evils covered by the parties taking each other "for better or worse."

II. Any marriage within the prohibited degrees was void from the beginning. It would be so regarded now, *strictly*, by those who hold that the scriptural prohibited degrees are morally binding; and *relatively*, by those who believe that natural law has put its ban upon the marriage of too near kindred.

Other impediments, to adopt Dr. Fulton's term, may be called "*dirimant*." \* "§ 1. Dirimant impediments are so called from the Latin word *dirimere*, which signifies *to sever*, separate, divide, dissolve, and they are such as not merely to forbid a marriage, but also to make it null and void however solemnly contracted. A marriage barred by a dirimant impediment is not a marriage but a crime, which the Church requires to be dissolved by the separation of the parties."

"§ 2. In canon law the number of dirimant impediments usually given is fifteen, which are named in the following mnemotecnic verses :

Error, Conditio, Votum, Cognition, Crimen,  
 Cultus Disparitas, Vis, Ordo, Ligamen, Honestas,  
 Ætas, Affinis, si Clandestinus, et Impos,  
 Raptave sit mulier nec parti redditia tutæ ;  
 Hæc socianda vetant connubia, facta retractant.

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\* "Laws of Marriage," pp. 26, 27.

That is to say, Error on the part of one of the contracting parties; Disparity of condition, if one be free and the other a slave; a vow of Celibacy; Consanguinity; Crime; Disparity of religion; Violence; Holy orders; Pre-contract; Public Decency; Age; Affinity; Clandestinity; Impotence; Abduction. Some canonists insert *Amens* instead of *Ætas*, in the third line, thus omitting the impediment of *age* and inserting that of *insanity*, but the change seems to be undesirable as well as unnecessary."

These fifteen impediments to marriage have not the sanction of universal, or even general, canonical authority. They must be adjudged upon their merits; and, if embodied in modern canon law, must be so upon their own merits exclusively. Taken in order, the first, "error," would be a very dangerous impediment for general allowance. The parties would naturally give the broadest possible interpretation to it. They might even claim that they had mistaken persons, even when they only find them upon intimate acquaintance to be different from what they expected, e.g., incompatible in temper. If the term were embodied, definitions would go with it; but definitions could not be made sufficiently full and specific to forefend all abuses. The only safety would be in leaving the parties to the consequences of their error. It would make them more careful, in contracting marriage, to know one another well beforehand. Anything that would encourage "marrying in haste" is especially to be avoided in canon law.

Disparity of social condition would certainly never be allowed in modern canon law. Personal equality

of rights and duties is not affected by social status. We stand before God, and consequently before society and church and state, on common ground of personal dignity and responsibility.

A vow of celibacy is personal. However one may break it himself, and incur guiltiness before God, it would be adding sin to sin, if another were compelled to suffer. Society, church, or state cannot accept such a plea in bar of either marriage duties or rights.

Consanguinity, within the actually prohibited degrees, of course makes true marriage impossible, and therefore void from the beginning. The church should forbid it in her canon law, because it is forbidden by the law of God. Society should condemn it, because it would foster an immorality which would weaken always, and, if sufficiently prevalent, destroy the social basis. It would promote physical deterioration, which would also be detrimental, and finally fatal, to society. The civil law should both forbid and punish it, because it would imperil the very foundation of public order.

A criminal has no longer personal rights. He is both a civil and social outlaw. He has neither civil nor social right to contract marriage, nor to bind another if he becomes criminal after marriage. This is evident, if the crime is such as makes life a forfeit, or liberty a permanent deprivation; but every degree of criminality does not deprive one of civil and social rights. He has some claim to protection. It remains for civil law and social custom to draw clear lines of criminal disability. The church cannot ignore the fact that extreme criminality actually destroys the

mutuality of marriage. It is practically the same as death. The criminal, for all the purposes of marriage, is as one dead. Even society and the state should consider the possibility of the criminal's restoration to citizenship and personal liberty; while the church should not only take this point into view, but also foster that self-control which both promotes patience, and secures that peculiar grace and strength which arises from devoutly preserved continence. Hence, while it might be fixing too heavy a yoke, if canon law absolutely forbade divorce and the consequent disruption of marriage for the cause of crime; yet it should accurately define the extent of diriment or disabling crime, never make light crime a cause, and only allow, never wholly approve, divorce even for extreme criminality. The crime of murder, committed on former husband or wife, takes away all right to marry again.

This is now quite out of the question. Such cases as these are to be settled upon purely personal grounds. If persons of different religions marry together, they must endure whatever consequences ensue. Church, state, and society have no right to interfere; much less to offer relief.

Violence, when real and irresistible, cannot bind any victim. A marriage by violence, if such were possible, would be *ipso facto* void. But marriage by violence—pure and simple—is impossible; for consent is of the very essence of marriage, and no violence can force consent, it never can subdue the free will, however it may force bodily action or sufferance. Society and the state must, in self-preservation, as far as they

can, deliver any sufferer from all violence. The church takes however the high ground, that it is better to suffer unto death than to do evil, or even to yield to wrong. But where no consent is given, and mere ravishment is suffered, the church certainly cannot take away any liberty from the sufferer. Under casuistry, it would be quite competent for the church to advise such sufferer to abide in her condition through life, and to fill up her soul with devotion and good works. She would not, however, be competent to enjoin life-long continence by canon law; not even to forbid the holy blessing upon formal marriage with even the violator himself.

Marriage with a priest has been lawful from the beginning, and is lawful now, by Divine permission. The priest has the same natural rights with laymen, in this respect; both in degree and number. The same, no more and no less! The evils of the opposite view are too manifest and too fearful, for the church now to differentiate them in her canon law. Her casuistry may favor clerical celibacy, as S. Paul favored it, for the sake of more exclusive devotion to "the work of the Lord;" but her canon law she has no right to frame so as to forbid any marriage rights to the clergy, which are not equally forbidden to the laity.

Precontract, not followed by consummated marriage, is no bar to actual marriage. Personal morality may be violated, and great wrong done; but the deed itself stands only before the personal conscience. It is punishable like a lie. For it "everyone must give account of himself to God." It is beyond the reach of society,

church and state. It may be punished by either as an active falsehood, but as such only. This of course precludes polygamy, *a fortiori*.

Public decency is no longer, in itself, necessary to be considered. It is covered by deeper considerations. The public mind now is hardly shocked by many serious and guilty violations of the natural and Divine law of marriage. If it be prejudiced against a lawful marriage, it is not worth regarding. Other prejudices it has outgrown.

Disparity of age covers only such cases, as marriage between parties, one of whom is too youthful to perform the duties of marriage. No other point comes under this head. It is hardly a practical matter now.

Insanity may void marriage from the beginning, for an insane person is incapable of forming any contract. Insanity after marriage is no ground for divorce, but, like any other misfortune, should be borne with patience and resignation. The church provides for this as for other possible ills, in the promises she exacts of parties in her ceremony of marriage. Neither society nor state can afford to break up families for such a cause.

Affinity is no impediment to marriage by natural law. The Divine law also does not touch it except where it forbids the marriage of mother and daughter and their actual equivalents. In historic canon law, affinity has been pushed so extravagantly that, like the requirements of clerical celibacy, the whole effect has been simply demoralizing. It may be safely brushed away and disregarded as a principle of either

civil or canon law. In some points of expediency it is worthy of social consideration, or even of regard in casuistry. As a general principle, however, it has no status either under the natural or revealed moral law.

Spiritual affinity, as a bar to marriage, is simply a grim absurdity.

Society, state, and church all require publicity in the contract of marriage. The degree of publicity is a matter of legal order and direction. The greater the publicity the better ; for it promotes serious consideration in the parties, and they are less liable to marry unadvisedly or lightly. But it is competent for church or state to prescribe the minimum of publicity. Where the civil law permits marriage by a single magistrate, or even allows it to be contracted by mere announcement before a single witness, the essence of publicity is attained, and the marriage becomes a true contract, which society must allow and even the church should recognize. Such marriages, however, are evil in tendency, very dangerous to domestic tranquillity, perilous to family permanence, and therefore injurious to society. Clandestinity, pure and simple, *i.e.*, union without any publicity, is not marriage at all. However parties, clandestinely joined, may be bound in conscience, they make only a mutual contract. They do not attain to a social or even civil contract, much less do they get the seal and blessing of the sacred mystery. This principle pervades all law, civil and canonical ; because every contract, in order to become a contract, must be announced. Otherwise it is an intention, and therefore only privately binding, and even that merely

to the extent of spoken promises by word or act. If the contract be reduced to writing the element of publicity exists in it, because either party may appeal to the writing and thereby enforce the announcement. The writing, however, must relate not an intention only, but the very act of contract itself.

The line, in the Latin summary above given, which forbids abduction is sometimes given thus :

“ *Si mulier sit rapta, loco nec reddit a tuto.*”\*

Abduction must be either by deceit or force. In either case the abducted party is not in condition to give a free consent, and therefore cannot make a true contract. That, which ought not to have been done, will—should it be done—be followed by natural consequences. While, however, the principles should have full force—that the wronged party should not be left to suffer, and the wrong-doer should derive neither powers nor rights from his evil deed—yet every case of the kind would present its own features, and should be dealt with according to circumstances ; in other words, it would fall under the domain of casuistry. Common justice would ordinarily require that the abductor should be compelled to keep the woman as his wife. Apos. Canon lxvii. enacts that “ he may not take any other, but must retain her.”

The earliest prohibition to marry a wife’s sister, in canon law, is found in Apos. Can. xix. “ He who has married two sisters or a niece cannot become a clergyman.” The canon next preceding—xviii.—makes the same prohibition against one “ who has married a

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\* Dict. Doc. Hist. Theol., Blunt, Philada., A.D. 1870, p. 446.

widow, or a divorced woman, or an harlot, or a servant maid, or an actress ; " while Can. xvii. forbids the same to anyone " who has been twice married after baptism, or who has had a concubine." It is evident that the " Apostolic Canons " are not of much weight now as authority upon this point.

In all probability, however, the marriage of a deceased wife's sister was not approved by the early church. It does not appear to have been forbidden positively and generally, by actual canon law, previous to the fourth century.

*Conc. Elib* (A.D. 305), c. 61. " If any man after his wife's death shall marry her sister, she too being a Christian, it is decreed that they abstain five years from communion, unless some necessity of sickness require that the peace be sooner given."

It will be observed that the marriage is not required to be broken off ; much less is it declared null and void. Very different language is used against incest, e.g., c. 66, " If any man shall marry his step-daughter, because he is guilty of incest, it is decreed that he shall not receive communion even in the hour of death."

*S. Basil* (A.D. 370), c. 23. " No man ought to marry two sisters, and no woman ought to marry two brothers. He who marries his brother's wife is not to be received until he put her away."

" Canon 78. He who successively marries two sisters is to be received only after submitting to the penance of an adulterer (seven years), if he repent with tears."

From the fourth century to the present time canon

law has persisted in forbidding the marriage successively of two sisters. The English Canon Law has set forth a Table of Prohibited Degrees which contains the same prohibition. It must therefore be allowed that there is "canonical consent," for at least fifteen hundred years, against the marriage of a deceased wife's sister. But this prohibition is given with a reason. Hence it must be tried by the reason given. No law, canonical or civil—given with a reason—can be quoted as absolute authority. It is good, if its reason hold; but if not, then the whole weight of its authority dissipates and becomes nought. In this case the reason given is the assertion that the consanguinity created by marriage is reciprocal, and that the man and the woman enter equally into each other's relationships. Hence, since the Divine law in Lev. xviii. forbids marriage with a deceased husband's brother, it equally forbids marriage with a deceased wife's sister. The facts are against this assumption. The woman does partake of the "blood which is the life" of her husband, but he does not receive of hers. Her personality is linked to his physiologically. His personality is not so linked to hers. The cases therefore are not parallel. The reason for the canon law thus fails because it is based upon the assumption of what is not fact. Hence canon law is no longer authority upon the point.

Of course, it will be objected that it is highly improbable that the learned canonists of all ages should have overlooked this palpable error. In answer it may be said that there is no evidence that they have ever noticed it, while the probabilities are that their atten-

tion was never directed toward it ; because from the very earliest times all eyes were directed another way. It was felt that canon law should be made as strict as possible, that it was better to enact too much than too little, that its fences had better be put as far beyond the letter of the principles of law as they could be kept.

Modern law, canonical and civil, takes more tenable ground. Its principle is that prohibitions should be bounded by veritable right and wrong. Everything right should be allowed by law. Inexpediences belong not to law, but to casuistry. It may be inexpedient in most cases, for many obvious reasons, to encourage marriage with a deceased wife's sister ; but each individual case should be determined by its specialties. A general prohibition of it has not been made in either natural or revealed law, and therefore neither church nor state has the right to forbid it.\*

In closing this succinct treatise, it may be proper for the writer to say that he has rather endeavored to set forth the principles involved, than to argue out in full the various points. He thinks that every essential point has been noticed, and fairly presented. He has not quoted, except where he has given due credit ;

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\* The person who first raised this point, as far as the writer is aware, was the Rev. W. H. Odenheimer, D.D., then rector of Christ Church, Philadelphia, about A.D. 1850, afterward Bishop of New Jersey. He raised it, with his characteristic caution, as a question ; which was enough under the circumstances, for the person who was seeking his counsel was quite willing upon his own judgment to follow out any necessary conclusion. It was agreed that, according to Scripture, marriage by consummation produced unity of flesh. They twain are one flesh. "How?" asked Dr. Odenheimer, "Are the man and the woman

but he has consulted a very great number of writers, and has written, either in approval or disapproval of their views, after as he thinks fairly and fully stating them. All the questions involved in Marriage and Divorce must now be settled, not by mere authority, but upon definite and clear first principles, followed out to strictly logical conclusions. Laws and canons will have weight and force according to their agreement with sure principles. Nowhere permanently, and not for a moment in America, will laws or canons be respected—much less obeyed—unless they are evidently based upon nature or revelation. These coincide, so that the social philosopher and the Christian can agree upon formal enactments for the conservation and promotion of public purity; although the one may base his arguments upon abstract power or good tendency, while the other may look for confirmation to the written word of God. Natural religion, sound philosophy, and Divine law may be appealed to; and their answers will coincide. It has been the aim, in this treatise, to set forth conclusions upon grounds which every right-minded person, whatever be his religion or his irreligion, may accept. The effort has been made—

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reciprocal receivers of each other's blood, or is the union effected in the one person only?" Evidently in one person only. This one person is the wife, and not the husband. Hence the wife becomes consanguineous with her husband, and is the blood relation of his blood relations. But the husband is not the blood relation of her blood relations. Hence, while the husband's brother is brother in blood to his brother's wife, the husband is not brother in blood to his wife's sister.

This point is fully argued by the Rev. George Zabriskie Gray, D.D., in "Husband and Wife," second edition. Houghton, Mifflin & Co., Boston, 1886.

not wholly unsuccessfully, it is hoped—to show that marriage constitutes the family, which itself constitutes the base of all order, social, civil, and ecclesiastical. The questions relating to marriage have been presented and argued, not so much in reference to morality as a duty, as in reference to purity as a conservative principle.











